

1 FRANKLIN COUNTY PLANNING AND ZONING
2 FRANKLIN COUNTY GOVERNMENT CENTER
3 SECOND FLOOR COMMISSION CHAMBERS
4 400 EAST LOCUST STREET
5 UNION, MISSOURI 63084
6
7
8 BOARD OF ZONING ADJUSTMENT
9 PUBLIC HEARING
10 FEBRUARY 25, 2020
11 (COMMENCING AT 7:00 P.M.)
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18 Reported by:
19 Patsy A. Mayberry, C. R.
20 Alaris Litigation Services
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1	I N D E X	
2	PROCEEDING	PAGE
3	CALL TO ORDER AND INSTRUCTIONS	6
4	ROLL CALL	7
5	P U B L I C H E A R I N G S	
6	FILE 200024 - JOHN BIRKMAN, RANDLE BIRKMAN,	
7	and JAMES CONNER:	
8	PROCEDURES AND EXHIBITS	8
9	PRESENTATION BY MS. EAGAN	78
10	PRESENTATION BY OPPOSITION	14
11	PRESENTATION BY SUPPORTERS	65
12	REBUTTAL BY OPPOSITION	70
13	DISCUSSION	73
14	VOTE	95
15	FILE 200034 - DEBORAH B. OLIVER/333 VINEYARD:	
16	PROCEDURES AND EXHIBITS	98
17	PRESENTATIONS BY MS. ZIELKE AND MS. EAGAN	100
18	PRESENTATION BY APPLICANT	110
19	PRESENTATION BY OPPOSITION	131
20	REBUTTAL BY APPLICANT	136
21	DISCUSSION	149
22	VOTE	159
23	ADJOURNMENT	161
24	CERTIFICATE OF REPORTER	162
25		

E X H I B I T S		
IDENTIFICATION	DESCRIPTION	PAGE
FILE 200024 - J. BIRKMAN, R. BIRKMAN, CONNER:		
COUNTY		
EXHIBIT A	PLANNING AND ZONING REGULATIONS	9
EXHIBIT B	FRANKLIN COUNTY ZONING MAP	9
EXHIBIT C	FRANKLIN COUNTY MASTER PLAN	9
EXHIBIT D	FILES FOR ALL CASES HEARD	9
OPPOSITION APPELLANT		
EXHIBIT 1	PRESENTATION BY MR. BILGES	19
	AND RESIDENTS' PETITION TO DENY	
EXHIBIT 2-4	SUPPORTING DOCUMENTS/PHOTOS	42
EXHIBIT 5	RANDALL BIRKMAN ITINERARY	42
FILE 200034 - DEBORAH B. OLIVER/333 VINEYARD:		
COUNTY		
EXHIBIT A	PLANNING AND ZONING REGULATIONS	99
EXHIBIT B	FRANKLIN COUNTY ZONING MAP	99
EXHIBIT C	FRANKLIN COUNTY MASTER PLAN	99
EXHIBIT D	FILES FOR ALL CASES HEARD	99
APPELLANT BAKER		
EXHIBIT 1	(NOT IDENTIFIED)	
EXHIBIT 2	P & Z DEPARTMENT DENIAL LETTER	114

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

(CONTINUED)

IDENTIFICATION	DESCRIPTION	PAGE
EXHIBIT 3	EVENT SPACE LAYOUT	114
EXHIBIT 4	DEBORAH BAKER-OLIVER AFFIDAVIT	113

(NOTE: ALL EXHIBITS, IF ANY, WERE RETAINED BY THE PARTIES AND ARE NOT ATTACHED HERETO.)

1 P R O C E E D I N G S

2 (FEBRUARY 25, 2020)

3 CHAIRMAN UPCHURCH: Good
4 evening. I'm Gordon Upchurch, and I'll call this
5 meeting of the Franklin County Board of Zoning
6 Adjustment to order.

7 Tonight I'm joined by Fred Thatcher,
8 Justin Head, myself, Derek Schriewer, and Steve Hoff.

9 We welcome you to this meeting this
10 evening. I'll just be blunt, folks. We normally have
11 one or two people here, and when we get an audience
12 like this, there are times when people feel that we're
13 going to do a little daytime TV. We are not going to
14 do daytime TV.

15 Anyone who wishes to speak will sign in,
16 will be sworn, and will present to this Board. If any
17 of you feel compelled to bark from the cheap seats, we
18 have security in the building. They will be summoned.
19 You will be removed from the building. We will all be
20 courtesy tonight so none of that will be necessary.

21 In addition to that, every one of you has
22 one of these. Turn it off now, and if anyone feels
23 compelled to pick one of these up and answer it,
24 again, you will be removed from the building with your
25 call. So turn these off now.

1 Again, we have a lot of people here. I
2 suspect a lot of people are going to want to be heard.
3 We are going to try to move this as quickly as
4 possible so that we can get home sometime before
5 tomorrow morning. But we will take all the time
6 necessary for everyone to be hear.

7 I'll add to that we try to do this
8 somewhat informally. Both sides that have appealed
9 have already submitted a packet. That packet will be
10 fully received by this Board. So there's no reason to
11 tell us again or offer again all of those items. We,
12 as a matter of course, have, will and I'm currently
13 announcing that we will take and receive all of those
14 materials when the matter is called.

15 With those things in mind, we are going
16 to begin.

17 Ms. Eagan, will you call the roll.

18 MS. EAGAN: Steve Hoff?

19 COMMISSIONER HOFF: Here.

20 MS. EAGAN: Derek Schriewer?

21 COMMISSIONER SCHRIEWER:

22 Present.

23 MS. EAGAN: Fred Thatcher?

24 COMMISSIONER THATCHER:

25 Present.

1 MS. EAGAN: Gordon Upchurch?

2 CHAIRMAN UPCHURCH: Present.

3 MS. EAGAN: And, Justin Head?

4 COMMISSIONER HEAD: Here.

5 MS. EAGAN: Okay. We have a
6 quorum.

7 CHAIRMAN UPCHURCH: Next, I
8 believe we need to read the last prior minutes. We
9 need to review those. Are those any minutes to
10 review?

11 MS. EAGAN: No, I don't think
12 they put them in your packet, to be honest with you.

13 CHAIRMAN UPCHURCH: Well, to be
14 honest, I looked for them, and I didn't find them.

15 MS. EAGAN: Yeah, so you can
16 skip that part.

17 CHAIRMAN UPCHURCH: I think I
18 will do that.

19 Ms. Eagan, will you read into the record
20 the hearing procedures, and I think do you do that
21 separately for each matter?

22 MS. EAGAN: We do.

23 CHAIRMAN UPCHURCH: Okay.

24 MS. EAGAN: Tonight's Board of
25 Zoning Adjustment hearing is governed by the Franklin

1 County Land Use Regulations.

2 At this time, I would like to place into
3 the record these Regulations as Exhibit A, the
4 official Zoning Map as Exhibit B, the official Master
5 Plan as Exhibit C, and the case file for each case as
6 Exhibit D for all the cases to be heard at this
7 hearing.

8 (THEREUPON, EVIDENCE WAS MARKED
9 FOR IDENTIFICATION AND SUBMITTED FOR
10 THE RECORD AS EXHIBITS A, B, C, AND
11 D.)

12 The Board of Zoning Adjustment will
13 address each case as they are listed on the agenda.
14 As each case is opened for hearing, a staff report
15 will first be read to the Board, followed by any
16 questions for the staff.

17 Then if anyone in the audience would like
18 to speak or comment during this public hearing, they
19 must first print their name on the sign-in sheet
20 provided, and then be sworn in by the Chairman.

21 When it is your turn to speak, you will
22 come to the front of the room to address the Board and
23 only the Board, not anyone in the audience, with your
24 comments.

25 At the conclusion of all comments and

1 discussion concerning each case, the public hearing
2 for that case will conclude and the Board of Zoning
3 Adjustment will proceed with a decision.

4 Any decision by the Board may be
5 appealed. If anyone desires to appeal a decision made
6 by the Board of Zoning Adjustment, they need to submit
7 it to Circuit Court.

8 You want me to continue?

9 CHAIRMAN UPCHURCH: At this
10 time, will you announce the application of 024.

11 MS. EAGAN: This is File
12 200024, John Birkman, Randle Birkman, and James
13 Conner.

14 The applicants are appealing the decision
15 made by the Planning and Zoning Commission on December
16 17, 2019 to approve the Conditional Use Permit Number
17 190233 for Barrett Materials, Inc. for the extraction,
18 quarrying or mining of sand, gravel, topsoil or other
19 material in the W Zoning District, formerly Non-Urban
20 and Agricultural.

21 This property is located at 5325 Hoeman
22 Road on the north side of Hoeman Road, approximately
23 1,600 feet south of Detmold Road in Lyon Township.

24 THE FACTS: The total parcel is jut less
25 than 300 acres in size, but the quarry will only use

1 approximately 45 acres.

2 This property is located in the Non-Urban
3 and Agricultural Zoning, now the W District. In this
4 district, extraction, quarrying, or mining of sand,
5 gravel, topsoil or other materials require a
6 conditional use permit.

7 The properties around the proposed site
8 are zoned Non-Urban and Agricultural, now the W
9 District. The area surrounding the proposed site is
10 generally undeveloped land with a few low-density
11 residential properties.

12 There appears to be 23 buildings on the
13 entire property; however, no buildings appear to be on
14 the proposed 45-acre quarry site.

15 The proposed site has access to Hoeman
16 Road. This is a county road with the right-of-way
17 width of 30 feet.

18 The applicant is not the current owner of
19 the property, but we do have a letter from the owner
20 allowing Barrett Materials to apply for the permit.

21 STAFF COMMENTS: The applicant received
22 approval from the Planning and Zoning Commission on
23 December 17, 2019 with 8 in favor and 2 opposed.

24 The application was approved with eight
25 conditions.

1 The applicants state that Franklin County
2 adopted the 2015 International Fire Code and that this
3 development does not have an access road that meets
4 the requirements of this code.

5 The 2015 International Fire Code was
6 adopted as a set of rules and regulations to govern
7 the County Building Department in evaluating,
8 approving or not approving the permit.

9 The 2015 International Fire Code does not
10 apply to decisions of the Planning and Zoning
11 Commission and are not incorporated in the County's
12 Unified Land Use Regulations.

13 The only codes that can be enforced by
14 the Planning Department and the Planning and Zoning
15 Commission are the Unified Land Use Regulations of
16 Franklin County as adopted by the Franklin County
17 Commission.

18 The applicants state in their appeal the
19 proposed quarry is located adjacent to a floodplain
20 and intermittent stream. While the proposed quarry is
21 west of a existing floodplain and south of an existing
22 stream, the location meets Franklin County's stream
23 buffer requirements. It does not require any
24 floodplain development permits.

25 The applicants state this approval

1 violates Article 4, Section 92. No testimony of
2 evidence has been presented indicating any
3 construction or erection would be taking place on said
4 property.

5 This argument is irrelevant to the issue
6 of whether or not the CUP should have been issued. In
7 fact, Article 4, Section 92 assumes that the CUP was
8 properly issued. It is only applicable to CUPs that
9 have been issued and not utilized for a period of one
10 year; after which, if the conditions specified in the
11 section don't occur, the CUP automatically lapses and
12 is void.

13 The applicants state that this approval
14 violated Article 4, Section 95(b), which states:

15 "If the Planning and Zoning
16 and Zoning Commission concludes
17 there is no substantial credible
18 evidence to support the application
19 based on the record as a whole, the
20 application shall be denied."

21 The Planning and Zoning Commission was in
22 the best position to judge the credibility of the
23 witnesses and the evidence both in support and in
24 opposition of the application for the CUP.

25 The Board of Zoning Adjustment has the

1 ability to reverse, affirm, or modify the order,
2 requirement, decision or determination appealed from.
3 In order to reverse or modify, the Board must have a
4 4/5 vote.

5 I also wanted to enter into the record
6 that we did receive a letter from the New Haven Berger
7 Fire Protection District that we marked as an addendum
8 to Exhibit D, which is the case file.

9 And then we also have the Highway
10 Administrator from Franklin County here if there are
11 any questions about the roads since that was a major
12 part of the appeal.

13 CHAIRMAN UPCHURCH: Thank you.

14 And we start as a matter of course with
15 someone, usually the applicant or appellant that has
16 brought the matter before us. So we'll let the person
17 or the person to speak on behalf of that person step
18 forward and sign in and be sworn.

19 We'll only take one of you at a time.

20 (THEREUPON, THE WITNESS WAS
21 SWORN.)

22 Sir, before I let you go, I'm going to do
23 a little housekeeping here. Don't take off. You just
24 stay right there.

25 MR. JOHN BIRKMAN: Okay.

1 CHAIRMAN UPCHURCH: I want to
2 be clear because the County, since we were here
3 before, and I'm looking at Scottie, our vote in the
4 past on many, most, if not all of these matters were
5 4/5 vote if we were going to modify or deny, and I
6 think I heard that in your staff report.

7 Am I accurate that it'll take a 4/5 vote
8 of us if we were going to modify or deny what was done
9 before?

10 MS. EAGAN: Yeah, any motion to
11 reverse or modify the decision of the Planning and
12 Zoning Commission would take a 4/5 vote.

13 CHAIRMAN UPCHURCH: That was my
14 expectation, but I wanted to be clear and I wanted
15 those in attendance to be clear on that obligation of
16 the Board.

17 And I'm sorry, sir. I interrupted you.

18 MR. J. BIRKMAN: That's fine.

19 CHAIRMAN UPCHURCH: Your name
20 for the record.

21 MR. J. BIRKMAN: John Birkman.
22 I live at 5411 Hoeman Road, which the proposed quarry
23 is less than a quarter mile from our house and our
24 farming operation. We have cattle, and we do crops.
25 And it goes part of the way along our driveway, and

1 we've lived in this area -- well, Dad bought this farm
2 in 1945 when he came back from the service. And it's
3 been in the family ever since, and my son and I are
4 involved in it.

5 And we're just worried about our
6 buildings, our house, our cattle and ourselves with
7 this quarry being so close.

8 And I'd like to turn it over to our
9 engineer, John Hilges.

10 CHAIRMAN UPCHURCH: Before we
11 do that, and I'm going to ask everybody to be brief.
12 I mean, you've been brief.

13 MR. J. BIRKMAN: Okay.

14 CHAIRMAN UPCHURCH: But I want
15 to make sure you're done before you step away. If you
16 think that's all you wanted to give me, and I'm going
17 to finish part of that statement for you.

18 MR. J. BIRKMAN: Okay.

19 CHAIRMAN UPCHURCH: We've
20 received a ton of material, and I've looked through
21 pretty much every page. Although, I'll tell you at
22 times my glazed over, but I do make a genuine effort
23 to review that, and I have reviewed pretty much every
24 page in here over the last week or so.

25 So all of that has been received. I know

1 for me, it has been reviewed in whole or in part, and
2 all of that will be included in your packet. I'll
3 just bluntly say for all the matters this evening,
4 this Board has sort of learned over time we're another
5 stop on the railroad track, that this is a destination
6 that really doesn't get listed much. In eventuality
7 unless peace breaks out, we know that a court will
8 ultimately make these decisions. A court would want
9 to have records and the records on what you have
10 filed, I'm officially receiving for the second or
11 third time as part of your record. So that's been
12 received.

13 That being said, is there anything more
14 that you want to offer at this moment in time, or are
15 you done?

16 MR. J. BIRKMAN: I'm done.

17 CHAIRMAN UPCHURCH: Thank you.

18 MR. J. BIRKMAN: Thank you.

19 CHAIRMAN UPCHURCH: Next.

20 (THEREUPON, THE WITNESS WAS

21 SWORN.)

22 MR. JOHN HILGES: Good evening,
23 Board Chairman. Give me on second while I pull this
24 Power Point presentation up.

25 My name is John Hilges. I reside at 9476

1 Excelsior Road, and I'm here on behalf of the
2 application. I will disclose I do reside within
3 approximately three miles of the location, so I'm very
4 familiar with the location.

5 Okay. First off, I gave everybody a copy
6 of the actual presentation so you have it in front of
7 you.

8 CHAIRMAN UPCHURCH: Was that
9 included in the packet?

10 MR. BILGES: It was not. There
11 was an engineering report that was included in the
12 packet. This does have some of that information in
13 it, but there is additional information. And if I do
14 tend to go long, just let me know.

15 CHAIRMAN UPCHURCH: I'm trying
16 to be friendly to the courts who some of us have to
17 sit in front of from time to time. So I'm going to
18 ask that you have, before you get going, a copy of
19 this marked and identified to the reporter's liking as
20 an exhibit which you are tendering as part of your
21 testimony.

22 MR. BILGES: Correct, and she
23 does have a copy.

24 (THEREUPON, EVIDENCE WAS MARKED
25 FOR IDENTIFICATION AND SUBMITTED FOR

1 THE RECORD AS EXHIBIT 1.)

2 In addition, we also provided a petition
3 to approve the appeal and deny the use which was
4 separate from the Planning and Zoning. This is a
5 separate petition to approve the appeal and deny the
6 use, and it is signed by 85 petitioners. We did
7 submit this last Friday to Planning and Zoning, but
8 due to the number of the copies, I think we were
9 requested to bring it this meeting.

10 And again that is signed by 85
11 neighboring property owners and residents in the area.

12 CHAIRMAN UPCHURCH: And why
13 don't we attach that to what the reporter's already
14 marked as part of your offering.

15 MR. HILGES: But that is a
16 separate document. That is a petition to deny the
17 actual -- to Planning and Zoning. This is a petition
18 to approve the appeal to deny use. So it is a
19 separate document.

20 CHAIRMAN UPCHURCH: And that's
21 what I heard you testify to.

22 MR. HILGES: Yeah, sorry.

23 CHAIRMAN UPCHURCH: Scottie,
24 are we ready to move forward?

25 MS. EAGAN: Unless you want us

1 to mark this also. I don't know what this is.

2 CHAIRMAN UPCHURCH: We'll get
3 to that. You may proceed.

4 MR. HILGES: All right.

5 So again, do appreciate everyone's time.
6 My name is John Hilges. I'm a registered professional
7 engineer in the state of Missouri. I'm a certified
8 floodplain manager and a certified professional
9 erosion and sediment control. All of which feels
10 applicable in this appeal on behalf of the applicants.

11 So this is essentially a photo location
12 map. Now as we go through this, I'm going to show
13 various photos along the corridor, some of which again
14 have been regurgitated from the engineering report
15 that gave to you.

16 But this kind of lays out some of the
17 benchmarks or the haul route, some secondary haul
18 routes, school zone, and various other locations. As
19 we go through that, I will mark photo locations with a
20 note that will correspond to the photos in the
21 presentation.

22 CHAIRMAN UPCHURCH: Rather than
23 stop your testimony again, I'll task Scottie to append
24 the visual exhibit he has also to the other exhibit
25 we've already had marked as part of his exhibit.

1 Please proceed.

2 MR. HILGES: Okay. So as we
3 move forth with considering this appeal, there are a
4 few things that I believe are applicable in this
5 consideration. These all come out of the Unified Land
6 Use Regulations, which everyone within the county is
7 required to adhere to.

8 So Section 2, the Authority. That is,
9 like I said, is coming right out of the Unified Land
10 Use Regulations with a highlighted couple of things.

11 This was adopted obviously by the County
12 Commission of Franklin County to provide for the
13 harmonious development of the unincorporated area and
14 to promote the health, safety, prosperity and general
15 welfare of the present and future inhabitants, with
16 safety kind of being a highlighted item.

17 As you can see within the reported
18 testimony given to you by the various people that
19 submitted testimony, safety is really the primary
20 concern here. And we'll get into that in a little bit
21 of detail.

22 The second part, Part 2, Conditional Use
23 Permits, Section 91 is the Planning and Zoning
24 Commission still deny a permit if there is clear and
25 convincing evidence submitted at the hearing that use

1 will be significantly detrimental to, once again,
2 public health, safety and general welfare.

3 Now you guys did receive I think a copy
4 of the transcript within the packet. I do have a copy
5 of the packet, so I know you have those.

6 You'll notice that there were concerns
7 regarding roadway widths, you know, International Fire
8 Code, which I know we've heard the staff report on
9 that, and we'll hit on that a little bit here as well.
10 But safety again is the primary concern.

11 Section 95, Decisions on Conditional Use
12 Permit Applications. So considering whether to
13 approve an application, the proceedings shall proceed
14 essentially in two different ways, A and B.

15 'A' being that there is substantial
16 credible evidence given by the applicant at Planning
17 and Zoning, and there should be a vote. That vote is
18 -- that application is obviously subject to various
19 conditions which if it were approved to some level.

20 The second one is if there is no
21 substantial credible evidence, it clearly states
22 within the above regulations that it shall be denied.
23 And I think the key word is substantial credible
24 evidence, and we'll get into that.

25 So just a few things to consider as we go

1 through this.

2 So the first picture, and as we work --
3 these photos are taken from Hoeman Road working their
4 way east or northeast towards Highway Y. Now this was
5 identified as the primary haul route for Barrett
6 Quarry.

7 From what I gather, this is a public
8 accessible quarry. So there are various secondary haul
9 routes that we'll get into, but this kind of just
10 gives you some concept and photos from the sense the
11 driver's seat of a pickup truck.

12 So picture one along the haul route is
13 taken approximately this location. It's working its
14 way east as you can. The quarry is located -- sorry.
15 The quarry is located at this location on Hoeman Road.
16 This is the primary haul route that was identified in
17 the testimony. Again, that came from their testimony.

18 This photo, Photo 1, is taken from that
19 location. As you can see, there are some sight
20 distance horizontal curve issues on Excelsior Road. I
21 think it's a posted 45 or 40 mile an hour speed limit.
22 But just so you can see that there is some concerns.

23 Us as citizens that live out there,
24 obviously we understand those concerns that we're
25 seeing today.

1 Photo Number 2 as you work your way to
2 the right there, that is actually located at this
3 location. That photo was taken at a bridge that
4 crosses over Big Branch Creek. I did check the load
5 bearing on the bridge, I did verify that with the
6 County. The bridge is acceptable load rate. It does
7 not have any load restrictions on it. However, you
8 can still see that there is some sight distance
9 horizontal curve issues. If you drove it today,
10 you'll see the asphalt are kind of pushed up in the
11 middle of the center lane of the eastbound traffic, so
12 the direction we're going. Which clearly shows the
13 majority of the people have a somewhat of a hard time
14 staying within their lane boundaries. Which is
15 obviously a concern. So there are some horizontal
16 curve issues in that location as well.

17 As you work further to the north, you'll
18 see on this there's some right-hand turns. There is
19 -- that photo is Photo 3. That is another horizontal
20 curve issue. You can see it's got some issue. There
21 are chevron signs and some sharp curve signs on there,
22 and that's taken right out of the driver's seat of a
23 pickup stopped. I was stopped, I promise. But
24 stopped, and you can see there is issue with that.

25 And then again, as you continue to the

1 east towards Highway Y at this location, you'll also
2 notice horizontal curve issues. So you kind of get
3 the theme here. Excelsior Road is a winding road that
4 has topography changes which is not conducive
5 essential to a haul route with that amount of trucks.
6 Especially one that would be open to the general
7 public who doesn't quite understand maybe the hazards
8 of this.

9 Now as you look on the screen here,
10 you'll notice Highway Y, this is a green stripe. That
11 is actually a school zone, Franklin County R2 School.

12 It's a posted school zone. So at this
13 location approximately right here, you'll notice that
14 as you work your way to the north, that that road
15 actually enters into a school zone. So part of some
16 of the conditions that were that this quarry would be
17 operation during specific times.

18 Well, that timeline I believe is 8:00
19 a.m., which is approximately the time when the R2
20 school goes into session. Traffic is probably at its
21 highest. Also the quarry would be at its highest
22 because you're trying to get rock for the next day.
23 So there is some potential conflict there that actual
24 haul road outlets to Highway Y when the school is
25 open. Just consider that, the day school's open.

1 So as we move now to Hoeman Road, now I'm
2 again going to start at the Excelsior Road, Hoeman
3 road intersection essentially and work my way now
4 south to the actual proposed quarry location.

5 You'll see there I laid a tape measure
6 across the road. That is a photo taken of the tape
7 measure, and that picture, Picture 5, is taken at this
8 location. It's approximately a quarter mile down
9 Hoeman Road. It is 18-foot wide.

10 A typical dump truck, mirror-to-mirror,
11 is 9 1/2 foot. So if my math is accurate, 9 1/2 plus
12 9 1/2 is 19. It is not 18. I've hit on this a little
13 bit, and I know they hit on it on the staff report,
14 but Franklin County does use the 2015 International
15 Fire Code. The key word there is International. So
16 it is followed by everyone, including the County.

17 It clearly states if there's a fire
18 access -- all facilities are to have a fire access
19 road. Okay. The reason for that, there's a
20 commentary that's in the International Fire Code.
21 Okay. It says, "Why do we have fire access roads?"

22 It clearly states in that commentary that
23 it's there for emergency vehicles to pass one another
24 should there be an emergency. So if there was an
25 accident on Hoeman Road, if there was an accident at a

1 quarry that utilizes explosives, heavy equipment,
2 essentially heavy industrial, that emergency vehicles
3 need to access that site. Twenty foot is the minimum.
4 I did not write that. It's internationally approved,
5 and the County has also approved that.

6 So it clearly states that in the
7 commentary.

8 As you work now Picture 6, that just
9 works your way down Hoeman Road, essentially at
10 Detmold, and that photo was taken at that location.
11 And again it's 20 foot. So that location it does
12 actually meet that. So you can see utilize that, but
13 it gives at least some credence there are locations
14 along Hoeman that would meet that concern -- or that
15 concern.

16 The next photo, Photo 7, that picture is
17 taken at this location, pretty much at the
18 intersection with Detmold Road. Okay. Again, 20 foot
19 wide. There's really no issues with that, other than
20 I think it's standard highway or a county road is 22
21 foot wide, and I think that's within Franklin County's
22 own Rules and Regulations if you were to pave your
23 county I think the minimum is 22 foot wide. And I
24 think Commissioner Grutsch can attest to that.

25 In Picture 8 is again on your way to the

1 quarry. It's located essentially a quarter mile from
2 the quarry. The road actually narrows to 16 feet.
3 You know, 16 feet again does not add up to 19. It's
4 hard enough to pass two passenger cars. When I
5 actually was taking the photos for this exhibit, there
6 was a tractor that had to wait for me to move till I
7 got to an area that he could actually pass. And I
8 believe his tires actually went off in the ditch.

9 So keep in mind this is a county road.
10 This is the haul route that's been identified. Now it
11 ranges from 16 to 20 feet. It does not meet the
12 facility requirements of the IFC, which clearly state
13 the reason for it is pass two emergency vehicles.
14 This is a heavy industrial use, blasting, large
15 equipment, those type of things.

16 And this is just some photos of that
17 16-foot area that is my pickup truck. I think
18 pictures are worth a thousand words. I really don't
19 have a whole lot to add there. My daughter could pass
20 riding a bike, but that's about the best we can do at
21 that location.

22 In addition, and I do have the air as of
23 January 2020 which I could -- I apologize. Not
24 January 2019, 2020. So Ms. Eagan was correct. This
25 area is not located within a regulatory floodplain.

1 It's immediately adjacent to what's called a sediment
2 aid. That is now, however, there is no risk for
3 flooding. So that -- those photos, those were taken
4 at approximately this location right there. Right
5 next to the quarry.

6 Those photos were taken January of this
7 year. Ground saturated, that creek rises fairly
8 quickly. If you were to be going to the quarry, you
9 would have to figure out a way to turn around. There
10 is no -- the County does a decent job of posting it,
11 but there is no way to know, and on a 16-foot county
12 road, I question how that could be done.

13 But that is road -- water actually
14 standing on Hoeman Road. The picture to the bottom
15 actually shows -- you can't really see it, but in your
16 engineering report, you can actually see it. This is
17 not standing water. This is flowing water in that
18 area, which is obviously a safety concern.

19 And again, you guys have already seen
20 that. So I don't want to dwell too much on that.

21 So there are also two different secondary
22 haul roads is what I like to call them. So if you
23 refer back to the map, those are located in the
24 photos. Okay. One is from Detmold. The other one is
25 Hoeman as it progresses through Stone Church. This is

1 Photo 14. That is the Detmold slab, which is located
2 approximately right there. Okay. So Detmold slab I
3 think was testified at the last meeting I think by Ron
4 Williams, if I recall, County Highway Administrator at
5 the time, that it could not handle truck traffic of
6 that kind.

7 What's interesting though is I went on
8 Google and I did a directional analysis -- or I
9 basically typed in if I had to access the quarry from
10 the south, from Gerald, I use an address from Gerald,
11 okay. Punched in my wife's GPS, verified it on the
12 computer, and I can provide that to you all if you'd
13 like to see those directions.

14 But if you were to enter from Highway 50
15 and now know the area to access the quarry, it would
16 take you across one of those slabs. So I understand
17 that it's not identified as a haul route. These are
18 the directions. These are those directions on that
19 one analysis.

20 And I understand that you may know that
21 this is not the primary haul route, these two
22 locations, but if you were to come from the south,
23 your GPS would take you over these slabs. Okay.

24 And when they take you over the slabs,
25 you get to the slabs, you see the low-water crossing,

1 there's nothing in the GPS that says it's a low-water
2 crossing. You again would have to turn around on a
3 16-foot road with a dump trailer. Back up, figure out
4 what you're going to do, and then try to find a
5 different route. Okay.

6 Those two photos, those are major
7 cracking on that one concrete panel, the one to the
8 right which is a Hoeman Road low-water crossing, which
9 I'll mark here as Picture 15, that's actually rebar
10 sticking out there. Okay.

11 And I rode that slab with one of the
12 County Commissioners, and we had to drive around that
13 rebar because he was very much concerned about putting
14 it in his -- you know, running it through the front of
15 his vehicle. So again, we as the locals understand
16 that. We know it's there. We know it exists, but this
17 is a quarry that's going to be open to the public,
18 from what I understand. Okay.

19 So I think we can -- now need think that
20 those two slabs will not be utilized at some point
21 during the operation of this quarry. You are inviting
22 people to utilize that, which are clearly deficient.

23 And that was testified again by the
24 highway administrator.

25 So just some more photos. This is quarry

1 entrance off Enochs Knob. That is a county road.
2 Enochs Knob is a county road onto Highway 185. It's
3 approximately a tenth of a mile of county road to get
4 onto a MODOT highway.

5 This haul route is approximately 3 1/2 to
6 4 miles. Okay. So those are damage pictures that I
7 took in December of 2019. You clearly see trucks
8 stopping. Pavement damage there. That at the bottom
9 in May 2018, that is a photo from Google Earth, Google
10 Street View actually. You can clearly see that that
11 has started.

12 So it shows that there's, you know, the
13 progression of this pavement failure over time. I
14 would anticipate those things would happen to every
15 single one of those curves that I showed you earlier
16 tonight.

17 The stress on pavement typically happens
18 at those types of locations, and it's clear that there
19 is no fix even from 2018. So I would anticipate that
20 as the number of truckers, this is what we would
21 expect after a short amount of time.

22 Again this just lays -- these are
23 satellite images. That's April 2012. You can clearly
24 see how the stress of the pavement had at that time.
25 It progresses to 2016 and 2018. But images

1 essentially seven years and no repair.

2 And we were unable by Planning and Zoning
3 to get any information about how those things would be
4 repaired.

5 I did put together a quick tax analysis
6 and a pavement analysis of Excelsior Road. So the
7 County did not have any information on Sunshine
8 request how much asphalt is over Excelsior Road.

9 The only thing we do know is that the
10 current regulations allow for two to three inches of
11 asphalt. Two to three. It's two to three.

12 Using national paving calculations, I'm
13 able -- we are able to clearly to show that it would
14 require six inches of asphalt over Excelsior Road in
15 order to handle that type of traffic, which they
16 testified to. I didn't make the traffic numbers up.
17 That's just what they testified to, and I ran the
18 numbers.

19 In addition, the tax summary that I put
20 together basically all the taxing groups, Franklin
21 County R2 School; the County Road and Bridge Fund,
22 which roadways are essentially paid for out of that;
23 ambulance and fire and ambulance and transportation
24 sales tax. And it shows that after ten years, this
25 use essentially would be deficient. There would be

1 deficient tax revenue to fix this of \$240,000, that
2 there would not be enough tax generated to fix those
3 types of things.

4 So the only reason why I bring this up is
5 how can us as citizens, you know, be expected that
6 this is going to be taken care of. We would
7 anticipate that the roadways are crumbling. I've
8 lived out there my entire live, and it was a gravel
9 road. Property values were 1,500, 2,000 dollars an
10 acre. The have risen to essentially 5,000, 5,500,
11 essentially since the road has been paved.

12 There's been testimony they've submitted
13 on some of the homes that have been constructed out in
14 that area. This is a nice area. I would anticipate
15 once the road starts crumbling, the County's tax
16 dollars cannot support that, that I think it's
17 reasonable to be concerned that property values in
18 this area would also see a hit if the infrastructure
19 is not taken care of. Infrastructure that cannot take
20 care of the approved use currently as approved.

21 A few other things as we're going to
22 substantial credible evidence, this is the actual
23 application letter submitted by Cochran Engineering,
24 the applicant. The big thing here it hits on the
25 character references of the applicant.

1 I'm not sure -- you know, we're all good
2 people. I'm not sure how that plays into the facts of
3 an application, but I'm not sure that it is
4 substantial credible evidence to support the
5 application.

6 Again, I just didn't see any facts.
7 There were no numbers. There was nothing that would
8 support it. There was no market analysis put before
9 you.

10 Again, this is coming right out of the
11 testimony. There's reference give the shirt off their
12 back. A good guy would do anything. Pillar of the
13 community, those type of things. Which I do not
14 disagree with. I'm just saying how is that credible
15 evidence to support an application?

16 So to conclude, the use will be
17 significantly detrimental to the public healthy,
18 safety, morals and general welfare.

19 If the applicant cannot provide
20 substantial credible evidence to support this
21 application, based on the record as a whole, the
22 application shall be denied. That's in the code.
23 Nobody wrote that. That's not an opinion. That's
24 right there within the code.

25 And the developer is solely responsible

1 to providing a solution to overcome these issues. If
2 they choose not to, that's their decision to make,
3 which is an analogy here.

4 When Walmart went in in 2003 in
5 Washington, Missouri, they put a traffic signal in on
6 Highway 100. I'm sure it was from their -- they
7 constructed A. Roy Drive up to the city streets.

8 The City did not pay for that. The
9 developer did, which was Walmart. Now we could all
10 argue that the developer has deep pockets and those
11 type things. It's an irrelevant argument. The
12 developer had to overcome safety concerns and
13 considerations in order to support the application.

14 And the last thing I want to add to it,
15 and I'll end this. This is the County long-range
16 transportation plan of 2010. Okay. This was
17 completed by HDR. It is on the County's website,
18 easily found. It states in there, in that long-range
19 plan, that safety is the primary concern. Keeping
20 safety on county roads. Okay. And improving safety.

21 It also states that low-water crossings
22 are a detriment to safety. Why would we approve a use
23 that brings people to that location. It goes against
24 essentially common sense.

25 Thank you for your time. I appreciate

1 it, and if you have any questions for me, I'd be more
2 than happy to answer anything.

3 COMMISSIONER THATCHER: John,
4 I'll start. I know the area a little bit. I don't
5 know it certainly as well as you do.

6 I'm trying to grasp of the different haul
7 roads, and you had mentioned one of the Commissioners,
8 I guess road commissioner. Are all the roads
9 maintained by Franklin County?

10 MR. HILGES: Yes, they are.

11 COMMISSIONER THATCHER: So
12 there's no special road district?

13 MR. HILGES: Correct.

14 Excelsior Road is maintained by the County. Hoeman
15 Road is maintained by the County. Detmold Road is
16 maintained by the County.

17 So yes, they are all maintained by the
18 County.

19 COMMISSIONER THATCHER: And you
20 talked about the different haul roads, and I would
21 imagine the hauling is to Union and the hauling is to
22 New Haven, the hauling is --

23 MR. HILGES: North, south, east
24 and west.

25 COMMISSIONER THATCHER: North,

1 south, east and west?

2 MR. HILGES: Yes.

3 COMMISSIONER THATCHER: You
4 live out there now, correct?

5 MR. HILGES: I certainly do.

6 COMMISSIONER THATCHER: I'll
7 play the devil's advocate here a little bit.

8 MR. HILGES: Uh-huh.

9 COMMISSIONER THATCHER: And
10 you've lived there how --

11 MR. HILGES: I've lived here my
12 entire life. A short stint away at school.

13 COMMISSIONER THATCHER: And
14 where do you get rock now?

15 MR. HILGES: Currently rock is
16 hauled from New Haven. This location is within 20
17 miles, which I think was testified at the hearing that
18 rock becomes economically infeasible essentially to
19 haul once it exceeds 20 or 25 miles.

20 COMMISSIONER THATCHER: Okay.

21 MR. HILGES: There are four to
22 five quarries within that area. Owensville has one.
23 They would haul rock to me. Herman has a quarry that
24 would haul rock to me. Big Springs is a little bit
25 out there. River Stone on 47 has hauled rock to my

1 location.

2 COMMISSIONER THATCHER: Is this
3 map approximately 20 miles, or what's the scale on
4 there? I apologize.

5 MR. HILGES: Yeah, no, this is
6 -- this is approximately, you know, five miles.

7 COMMISSIONER THATCHER: Okay.

8 MR. HILGES: Five miles would
9 be a good estimate. So again, R2 school zone to
10 essentially this slab on Hoeman Road. So it's
11 approximately four or five miles.

12 COMMISSIONER THATCHER: Okay.

13 Thank you, John.

14 MR. HILGES: Yes, sir.

15 CHAIRMAN UPCHURCH: Are there
16 other questions from the Board?

17 (NONE)

18 Thank you. Sorry.

19 COMMISSIONER SCHRIEWER: I
20 guess my question would be obviously the general
21 sentiment from your guys' appeal is for us to overturn
22 this and turn it down.

23 What conditions would you entertain being
24 worthwhile for us to consider attaching to this
25 Conditional Use Permit?

1 MR. HILGES: You know, that's
2 an interesting sentiment. I don't think that I'm aware
3 that anyone that I've talked to in opposition is
4 opposed necessarily to a quarry operation. We all
5 understand where rock comes from. We get that. We
6 have rock roads and driveways.

7 We feel like our market is being served.
8 But really what it comes down to is safety and the
9 infrastructure as it sits cannot handle a quarry
10 operation. So to specifically answer your question,
11 you know, we believe that Hoeman Road should be
12 widened. Widened to what? Well, minimum 2015 IC,
13 which is 20 feet. But 22 foot is what the county road
14 standard is today, and I think Mr. Grutsch can testify
15 to that.

16 In addition, Excelsior Road is not
17 structurally capable of handling that traffic, and
18 we'll probably hear some testimony that grain trucks
19 and things do haul over that. That is true
20 intermittently that does happen. This is a sustained
21 use 312 days a year, okay. Six days a week
22 essentially.

23 We can argue that number is a little
24 high, but that's the worst case scenario for that
25 pavement.

1 So it's been shown and I've provided that
2 of working asphalt thickness or sections should be.
3 So I think a condition is that if -- and the slabs,
4 the secondary haul roads, if you let a use that
5 invites a detriment to public infrastructure which
6 directly, directly affects safety, it is a
7 responsibility of that developer to overcome those
8 issues. That's a financial decision. That is not a
9 decision by anyone else. Okay.

10 And it's my opinion it's -- again I use
11 my Walmart analogy. The City of Washington did not pay
12 for that traffic signal. Washington School District
13 is building a school, you know, on St. Johns Road
14 which is in the county. They're going through a
15 traffic study now to see if a signal is warranted.

16 If a signal is warranted, the Washington
17 School District pays for that, not the County, no
18 MODOT. Okay. The developer does.

19 So to answer your answer, I think a
20 pavement analysis needs to be done and reviewed to
21 make sure that it can meet a 15-year time life which I
22 think is what the County typically uses.

23 And if not, I think the developer should
24 be required to improve it. I think the developer
25 should be required to improve the haul route, which is

1 Hoeman Road. I think the developer should be required
2 to -- any infrastructure within the general area,
3 that's the general area not 15 miles away, in the
4 general area where traffic is going to be invited to
5 that wasn't there before it needs to be improved.

6 Otherwise, it does, you know, warrant an
7 increase in safety. At the end of the day, I mean,
8 we're concerned about our neighbors, those type
9 things.

10 So I know it's a long answer, but...

11 Thank you.

12 CHAIRMAN UPCHURCH: Other
13 questions?

14 (NONE)

15 Thank you.

16 MR. HILGES: Thank you.

17 (THEREUPON, EVIDENCE WAS MARKED
18 FOR IDENTIFICATION AND SUBMITTED FOR
19 THE RECORD AS EXHIBITS 2 THROUGH 4.)

20 CHAIRMAN UPCHURCH: Is there
21 anyone else to speak on behalf of the appeal?

22 Sign in, be sworn.

23 (THEREUPON, THE WITNESS WAS
24 SWORN.

25 THEREUPON, EVIDENCE WAS MARKED

1 FOR IDENTIFICATION AND SUBMITTED FOR
2 THE RECORD AS EXHIBIT 5.)

3 MR. RANDALL BIRKMAN: I kind of
4 have an itinerary of what I was going to say.

5 CHAIRMAN UPCHURCH: Your name
6 for the record, please.

7 MR. R. BIRKMAN: Oh, Randall
8 Birkman, 5411 Hoeman Road. Also known as Randy
9 Birkman.

10 CHAIRMAN UPCHURCH: You have
11 the floor.

12 MR. R. BIRKMAN: Okay. It's
13 kind of a little itinerary of what I was going to say
14 here. Some of this stuff is repeated. I live within
15 500 feet of the proposed quarry. There's a regulatory
16 floodplain that's adjacent to the quarry.

17 One of the questions I have for the Board
18 is --

19 CHAIRMAN UPCHURCH: We don't
20 answer questions, sir. You have the floor to present
21 facts to us to help us make our determination.

22 MR. R. BIRKMAN: Okay.

23 CHAIRMAN UPCHURCH: Please
24 proceed.

25 MR. R. BIRKMAN: I would hope

1 that maybe some of you would actually come out and
2 drive the road.

3 CHAIRMAN UPCHURCH: Sir, you
4 have an opportunity to present facts for us to
5 consider and proceed.

6 MR. R. BIRKMAN: Okay. So
7 anyways, Hoeman Road's very narrow. My dad was in a
8 grain truck wreck on the road due to the narrow roads
9 of Hoeman Road. I mean, we live out in the area where
10 it's basically an non-urban zone, and there's been
11 numerous close calls in the 3/10 of a mile southwest
12 of Detmold Road on Hoeman Road.

13 Numerous times that there has been close
14 calls of accidents, and I don't see how you can let a
15 business be put in there.

16 The other thing is Hoeman Road is
17 basically very, very little maintenance done. Out
18 there right now, since January flood, they haven't
19 even bladed the whole entire road with a motor grader
20 to do the repairs from the flooding. There's still
21 feet of sand by the slabs. I'm talking one to two
22 feet by any slab.

23 When it snows, normally it's the next day
24 when we get a decent snow that they come out and blade
25 the road.

1 So as a safety issue to me, people going
2 just to the quarry the day after it snows can be in a
3 wreck. I mean, you've got school buses traveling
4 Excelsior Road. They're narrow. I mean, they're
5 windy, curvy, and I just don't understand how someone
6 thinks a business that's six, seven miles from the
7 city limits of New Haven is going to be profitable. I
8 mean, there's nothing out there.

9 I mean, who wants to drive that far to
10 get a load of rock? It doesn't make any sense to me,
11 and it's not that whoever's name is on the application
12 that I'm against. It's just the fact is that it is is
13 treacherous conditions to drive just for the residents
14 that know the roads.

15 And public safety is foremost our biggest
16 concern. And that just is the highest level that we
17 need to address.

18 And the other thing is -- I don't know,
19 but that's all I have to say on it.

20 CHAIRMAN UPCHURCH: Are there
21 questions of this witness?

22 (NONE)

23 Thank you.

24 Is there someone else to speak on behalf
25 of the application in opposition to the permit?

1 Step forward, sign in, be sworn.

2 (THEREUPON, THE WITNESS WAS
3 SWORN.)

4 MR. JAMES CONNER: My name is
5 James Conner.

6 CHAIRMAN UPCHURCH: James,
7 before I let you proceed.

8 Folks, I'm going to try to move this
9 along a little bit rather than have everybody come up
10 and I'm not going to tell you can't come up and say
11 what everybody else has already said, because you can.
12 But we've already used most of an hour. And the
13 record that I've already assured the applicants of is
14 we have received and made part of the packet is that a
15 week at least I will get us and the record will be
16 accurate to the person. Twenty to thirty people don't
17 want this to happen, and their names are in there.

18 That is already in the record. Okay.
19 That is already before us. If it ends up in a court,
20 it's already in the packet and will be before the
21 court.

22 Thank you, sir, will you proceed.

23 MR. CONNER: I just want to
24 comment on that. I mean, there's 85 people signed
25 that petition and none of those people want --

1 CHAIRMAN UPCHURCH: And that
2 could be. I didn't count. There were several pages.

3 MR. CONNER: And none of those
4 people want that quarry because they're all concerned
5 about the safety of meeting trucks on Excelsior Road,
6 Excelsior, Stone Church and Hoeman Road.

7 CHAIRMAN UPCHURCH: And I've
8 heard that from two now.

9 MR. CONNER: I know you've
10 heard that already enough tonight. I know. I'll take
11 a little different spin on this.

12 You know, I live within sight distance of
13 this quarry, you know, and when they're shooting, I
14 mean, there's literally within sight of my porch.

15 And the property values. Nobody has said
16 anything about the property values. I know there's
17 some things in your packet about it, but Mr. Barrett
18 said that property values -- it does not hurt your
19 property values, a quarry. No one is going to
20 convince me that I'm looking at this quarry out my
21 front porch that's not going to affect my property
22 value.

23 And anybody here would have to agree with
24 that, and nobody wants to buy a place that you're
25 looking at a quarry across the creek behind them. You

1 know, there is environmental concerns. You know, the
2 runoff from this quarry is going to go right into
3 Boeuf Creek. Nobody has addressed that issue yet. I
4 guess that's an DNR issue. I'm not sure, but nobody
5 has really brung that issue up here tonight.

6 You know, true, the quarry itself is not
7 in a floodplain, but the road is. The runoff is going
8 to right into the floodplain. It's all going to go
9 right into the creek, you know.

10 Randy brought up a couple of minutes ago
11 about, you know, they have not done anything to the
12 roads since the last flood, which was this January. I
13 have to bring this up because you meet somebody on
14 this road the way it is today, without some
15 improvements, you have to pull off on the shoulder of
16 the road for a big truck to go past you.

17 The road grader three weeks ago was out
18 there, drove down the road.

19 CHAIRMAN UPCHURCH: Which road
20 are you talking about?

21 MR. CONNER: This is Hoeman
22 Road itself, right next to John Birkman's farm. The
23 road grader driving down the road pulled off on the
24 shoulder. I have no idea why, but the road grader
25 itself got buried on the shoulder of the road.

1 They had to bring two truck -- two dump
2 trucks down there to pull him out. This was three
3 weeks ago. He never went down there to finish grading
4 the road afterwards. I'm not sure why, but -- but
5 anyway, you know, the property values is one big
6 concern of mine.

7 As I mentioned before, studies I've
8 looked at as much as 30 percent or if you're within
9 sight of or the immediate area of a quarry, diminishes
10 30 percent of your property value.

11 You know, the dust is another factor that
12 concerns me. If you live within a mile radius,
13 there's several studies I've looked up. The fine dust
14 from a quarry operations on the daily operations, the
15 fine dust can travel a long way. My son and I have
16 both been diagnosed in the past with asthma.

17 You know, this fine dust is a big concern
18 of mine because, like I said, I can see this out my
19 window. So you know, I am definitely going to have to
20 be eating this dust. And you know, there's people
21 that -- several families in the area that's been for
22 generations, and it's not fair to them to disgorge
23 them. They have to deal with the issues of health
24 hazards of the dust and stuff that goes along. Not to
25 mention safety hazards of the roads.

1 Anyway, I had a big speel on the road,
2 but I'm not going to go into that because you guys
3 have heard all that already so...

4 CHAIRMAN UPCHURCH: Thank you.

5 MR. CONNER: Quality of life
6 for people in the immediate area. You know, there's
7 not a lot of houses in the immediate area, but there
8 are quite a -- you know, there's several, you know.

9 The noise, the dust, you know, the permit
10 has been issued for six days a week. So we're going
11 to have to put up with the noise and the dust for six
12 days a week.

13 You know, I've lived -- I've worked in
14 construction. There's backup beepers, you know, I
15 kind of understand what kind of noise I'm talking
16 about, you know. Yeah, it is a big concern of mine
17 just to listen to that every day for the rest of my
18 life.

19 This is going to go, Mr. Barrett
20 estimated, for 97 years. This quarry is going on
21 there for 97 years, is what he brought up in the last
22 meeting.

23 Anyway, Mr. Barrett claimed that on the
24 average he loads around 15 loads a day out of a
25 quarry, out an existing quarry on 185. I'm assuming

1 he's thinking that's what's going to happen out here
2 also. That's 30 opportunities to meet a dump truck on
3 Excelsior, Stone Church or Hoeman Road.

4 Trucks will travel the county road for
5 nearly three miles before they reach State Highway Y,
6 and it's inevitable that sooner or later something
7 will happen under the condition of the county road the
8 way it is today.

9 It's almost inevitable. I mean, if you
10 look at, like I said, the way the road is today,
11 16-foot wide road. There's a third of a mile that
12 road is 16, 18 feet wide. If you meet somebody -- if
13 you meet a big dump truck in the middle of that, who's
14 going to back up? You know, am I expected to back up?
15 The big truck going to back up?

16 I don't understand how they could do that
17 without doing the road improvements. You know, like I
18 said before, there are 85 residents in the local area
19 who are concerned about meeting these trucks on
20 Excelsior, Stone Church or Hoeman, Detmold Road. A
21 lot of people are concerned about it and what they're
22 going to do to the roads.

23 So anyway, in closing, I just hope you
24 guys take in the facts that have been presented to
25 you. I assume you will. Try to see our point of

1 view, the residents who live in that area, you know,
2 our concerns.

3 Thank you. That's all I have to say.

4 CHAIRMAN UPCHURCH: Are there
5 questions of this witness?

6 (NONE)

7 Thank you.

8 MR. CONNER: Yes.

9 CHAIRMAN UPCHURCH: Is there
10 another speaker to be heard on behalf of the
11 application in opposition?

12 MR. GARY SEALS: Yes, sir.

13 CHAIRMAN UPCHURCH: Sign in, be
14 sworn.

15 (THEREUPON, THE WITNESS WAS
16 SWORN.)

17 MR. SEALS: I'm Gary Seals. I
18 live on Excelsior Road. I won't go into the things
19 that have already been mentioned.

20 CHAIRMAN UPCHURCH: Thank you.

21 MR. SEALS: My people have been
22 out there since the early '70s. Not like John's who
23 go back to '45 or my neighbor Howard Busch (ph.) over
24 here. His grandpa bought that property in 1903. So
25 there's been quite a legacy there.

1 Well, I'm a realist. I don't -- I'm not
2 an expert. Whatever you call my graduation exercise
3 is never call yourself an expert. If you break it
4 down, the 'X' is a has been and the "spert's" a drip.

5 But after that, I can foresee Highway
6 100. It stops at my lane in Washington, continuing
7 out to Herman and beyond in the very near future. I'm
8 sure MODOT's already allocated some money for that.

9 I've been in the trucking business since
10 '68. I've been in heavy equipment, construction
11 business the rest of that time. So I'm aware of what
12 it's going to be. We've been blessed to get a
13 blacktop road out there, and would like to keep it.

14 But the other things that concern me is
15 when you get a major construction project like
16 repaving the road, you know, they get contracts that
17 gives incentives for early completion, and they also
18 charge them penalties for being late. So obviously
19 they work day and night.

20 You've seen projects you go by and they
21 have the lights all night. Well, when they're working
22 they have to run trucks day and night. We don't
23 perceive hearing trucks running down the road till way
24 late at night till early in the morning when you think
25 you live in a rural area.

1 The other thing that concerns me is
2 you're obviously concerned about the military vets. I
3 heard nobody say anything about the blasting going on,
4 and I know people myself who are suffering from
5 posttraumatic syndrome. Okay.

6 And one particular gentleman is a veteran
7 from Viet Nam, well decorated, and he and I were
8 standing along side one night one of the empty dump
9 trailers one day, and a simple walnut fell down in
10 this empty dump trailer. I mean, boom, just like that
11 as a reflex, he was underneath that trailer.

12 Well, he comes back, and he's kind of
13 sheepish. He said, "Just bear with me, boss." He
14 says, "It's going to take me a while to get over
15 this."

16 Okay. I respect that. But take that
17 same scenario. Say he's out here on a tractor pulling
18 a disk and a blast goes off, which is going to be a
19 daily occurrence, and it's not going to be a walnut
20 falling in an empty trailer. What if he bails off
21 that tractor and falls in front of that disk?

22 This ain't about money. I know that
23 there are people who buy quarries and flip them just
24 like people flip houses. It's an industry. I don't
25 know the Barretts. I respect them. They're probably

1 very good people. They're smart people. The first
2 guy out there to buy this property that's got major
3 potential that they're going to make a big profit.

4 And I don't buy for a minute that it's
5 going to be 45 acres and 15 loads. That ain't going
6 to happen. You're probably going to end up with a
7 quarry that they'll come back later and say well, we
8 need more ground. We need to put a concrete plant in
9 here. We need an asphalt plant. Fifteen loads, that
10 cost them that. They'll use 15 loads running fuel in
11 there.

12 Like I said, I've been in the business
13 quite a long time, and I'm familiar with that. I've
14 helped Fred Weber do a small lake in a quarry, and of
15 course, he was gone a long time ago. But that's my
16 concern, is to consider the vets with this
17 posttraumatic stress syndrome and how it's going to
18 affect them.

19 People that I've known, they're going to
20 wake up in the middle of the nights with the sweats,
21 go out in the garage and work in the middle of the
22 night because they're afraid to go back to sleep.

23 And maybe you don't know people too, but
24 anyway consider those things. Appreciate your time.

25 CHAIRMAN UPCHURCH: Hold on a

1 second. Are there any other questions for this
2 witness?

3 (NONE)

4 Thank you, sir.

5 Is there another witness to be heard on
6 behalf of the appeal in opposition?

7 Sign in, be sworn.

8 (THEREUPON, THE WITNESS WAS
9 SWORN.)

10 MR. CHRIS MILLER: My name is
11 Chris Miller. I'm the EMS director for the New haven
12 Ambulance District.

13 We get e-mails all the time from Franklin
14 County road closures due to high water, multiple
15 different things. Hoeman Road is one of the major
16 ones that we always get.

17 Now, most of my guys understand you can't
18 go out on the low-water slab. I haven't been out
19 there in a long time, I will admit, and I went out
20 there a couple of weeks ago. And I thought we were
21 going to use a four-wheel drive to get up the hill.
22 The road is a mess, and it's soft. And if I take an
23 ambulance out there, I just got an ambulance stuck
24 yesterday. You get off just a little bit off the side
25 of the road, it'll suck it in and you're stuck.

1 And if I'm going to an emergency call and
2 I'm in the middle of the road and I suck down tight,
3 there's a problem.

4 So you know, I don't care whether that
5 quarry --

6 CHAIRMAN UPCHURCH: Which road
7 we talking about?

8 MR. MILLER: Hoeman.

9 CHAIRMAN UPCHURCH: Sorry.

10 MR. MILLER: I don't care of
11 the quarry is in or not, but there is some serious
12 maintenance issues that need to be addressed out
13 there.

14 So that's all I have to say.

15 CHAIRMAN UPCHURCH: Thank you.
16 And questions for this witness?

17 Before you get away, you're with what
18 district?

19 MR. MILLER: New Haven.

20 CHAIRMAN UPCHURCH: It serves
21 that area?

22 MR. MILLER: Uh-huh.

23 CHAIRMAN UPCHURCH: Thank you.

24 Is there another speaker on behalf of the
25 appeal in opposition?

1 Step forward, sign in, be sworn.

2 (THEREUPON, THE WITNESS WAS
3 SWORN.)

4 MR. GARY BROWN: Hi, my name's
5 Gary Brown. I also live on Excelsior Road. Moved out
6 there since '99.

7 One thing I wanted -- or a couple of
8 things I wanted to mention was this, the last meeting
9 which I know you guys have no control over.

10 But this was presented to us and was
11 passed without the road district people going out
12 there and looking at the road. So they basically
13 voted something in or voted for something, but they
14 really didn't --

15 CHAIRMAN UPCHURCH: We don't
16 handle --

17 MR. BROWN: I understand.

18 CHAIRMAN UPCHURCH: We're in
19 charge of nobody.

20 MR. BROWN: I understand.

21 CHAIRMAN UPCHURCH: We have as
22 little power as is humanly possible.

23 MR. BROWN: I understand. I
24 just wanted to voice my complaint that I don't think
25 it was -- I think it was kind of voted on under false

1 pretenses. I'll put it that way.

2 Another thing I wanted to ask -- I know
3 you don't answer questions -- you know, point out is
4 in the last meeting, it was stated that they'll have
5 between 8 to 15 loads per day, as was mentioned.

6 That's not accounting for all of the
7 other truckers coming in from surrounding areas
8 hauling out of that quarry. So that number's going
9 to, you know, grow exponentially as to what was
10 listed.

11 So you know, this never was a commercial
12 thoroughfare going up and down Excelsior Road to haul
13 rock. I'm not against the improvements. I think it's
14 a great thing, you know, but it's -- that's our
15 neighborhood that these are going up and down through.

16 You know, it's just going to, as was
17 mentioned before, going to tear up our roads, and it's
18 just not going to be good for our community, in my
19 opinion.

20 Another thing I wanted to mention was I
21 would hope you would consider our petition when you
22 make your vote tonight. I know in the last meeting,
23 it was -- we were told in the transcript that it was
24 not evidence. However, it takes a petition to get a
25 road paved. So I guess I wonder why our petition is

1 not evidence, and hopefully it will be this time.

2 Anyway, I just -- I would encourage, you
3 know, you guys to go out there and take a look at this
4 before you make your vote. As everybody has said, I'm
5 not going to go over it again, these roads are
6 terrible.

7 It's not fit for just passenger car
8 traffic much less commercial.

9 CHAIRMAN UPCHURCH: Answer me
10 this.

11 MR. BROWN: Yes, sir.

12 CHAIRMAN UPCHURCH: We've
13 talked about several roads here. Hoeman Road one.

14 MR. BROWN: Yes.

15 CHAIRMAN UPCHURCH: It appears
16 to all be paved.

17 MR. BROWN: Excelsior is paved.

18 CHAIRMAN UPCHURCH: Okay. Is
19 Hoeman Road paved?

20 MR. BROWN: No. It's where it
21 was -- that was the pictures John had.

22 CHAIRMAN UPCHURCH: The gravel
23 road was Hoeman?

24 MR. BROWN: Yes. Right.

25 CHAIRMAN UPCHURCH: Okay.

1 MR. BROWN: Yeah.

2 CHAIRMAN UPCHURCH: And I
3 interrupted you. You may continue.

4 MR. BROWN: No, that's all.
5 That was really all I had to say.

6 CHAIRMAN UPCHURCH: Okay. Hold
7 on. Are there questions of this witness?

8 (NONE)

9 Thank you, sir.

10 Other speakers to be heard on behalf of
11 the appeal in opposition, step forward, be sworn.

12 (THEREUPON, THE WITNESS WAS
13 SWORN.)

14 MS. JULIE ONNER: So I will try
15 to be brief. I'm a little rattled because I had a
16 real good -- I'm sorry. I'm July Onner. I live on
17 5512 Hoeman Road.

18 Like I was saying, I had a big plan of
19 everything I wanted to say, but you've heard almost
20 all of it already. So I'll just pick on anything that
21 I really want to point out.

22 CHAIRMAN UPCHURCH: Thank you.

23 MS. ONNER: I also did submit
24 some information in the packet. Some pictures as
25 well. As you'll be able to tell, I'm not a

1 professional photographer, but I hope they give the
2 idea.

3 I haven't lived out there nearly as long
4 as some of the people who have spoken, but I wanted to
5 say, you know, when my husband and I got married, we
6 spent a long time looking for where we wanted to live.
7 And we chose this beautiful place that we live. We
8 purchased it in 1991. It took us two years. We are
9 hardworking people. We came out on the weekends. We
10 have family.

11 By 1993, we were able to move in there.
12 There are many, many reasons we chose to live there.
13 We choose to live in a rural place for the peace, for
14 the quiet, the tranquility. No pollution. You know,
15 there's many reasons why we choose to live there.

16 I really feel like this quarry, there are
17 major safety concerns, and it is certainly going to
18 severely affect the quality of life that we have.

19 You know, a couple of things that I don't
20 think I mentioned in the letter I had put in and
21 wanted to emphasize is this year there is not a school
22 bus that travels Hoeman Road from Franklin County R2
23 School. That is not always the case though. All the
24 years my children were growing up, there was a school
25 bus on Hoeman road.

1 There are several small children that
2 live in different locations, so I very strongly
3 believe that in the near future, there will be a bus
4 again.

5 I don't know what will happen when a bus
6 encounters one of these trucks. You know, you've seen
7 the pictures, you've heard evidence, but I mean, I
8 drive this road every single day. It is tough to
9 drive. You do. There are times I need four-wheel
10 drive to get through the mud, forget the snow and ice,
11 just the mud gets that bad.

12 When we go through our cycles of it
13 thawing and refreezing, it's almost impossible to
14 drive. I do believe that we will have -- we live
15 right by the Hoeman slab that you keep hearing about
16 that has the rebar sticking out of it. If that slab
17 gets very much traffic, heavy traffic, it will just
18 not function. That gives us one way out, which is
19 straight up a hill on Hoeman Road. I did put a
20 picture in the packet of that.

21 Sometimes -- I mean, that is a dropoff.
22 There's a creek. There is no guardrail. I don't
23 think it would take very much heavy traffic going over
24 that road. I honestly don't know sometimes how I will
25 get out of my house, and God forbid I need emergency

1 equipment just like everybody has talked about.

2 I am concerned about the quarry needing
3 emergency equipment, but what about us. If I need an
4 ambulance or a fire truck and there are these trucks
5 on the road? It's not going to be easy or fast for
6 them to get to us, you know.

7 We've talked about -- I sent some
8 pictures of the size of the road. There are no
9 shoulders. I have to correct my husband. He said the
10 shoulder. There are no shoulders. There are sides
11 that are ditches, that are soft, that when it's muddy,
12 when the weather is bad, you can't use it, you can't
13 pull over. They're very limited.

14 Last thing I said I would be brief. You
15 know I've heard the argument when they talked to the
16 Planning and Zoning Commission and even some of the
17 things I've read and heard people say as well. It's a
18 very rural area. It's a very remote area. That makes
19 it a perfect place for a quarry.

20 I just want to argue I think that's just
21 the opposite. I do not think this is a good safe
22 place for a quarry to be. I think as a tax basis in
23 Franklin County, if I chose to live in this rural
24 area, I have a right to the quality of life I expected
25 when I moved there. And then that's just compounded

1 by the safety concerns.

2 I just can't even -- I can't imagine what
3 that road will be like, Hoeman Road, and what kind of
4 damage will be done to the road. But there will be an
5 accident. I mean, I am not a drama type person, but
6 there will be a serious accident, I have no doubt.

7 Anyway, sorry if I rambled, but thank you
8 for your time and your consideration.

9 CHAIRMAN UPCHURCH: Are there
10 questions of her before she leaves?

11 (NONE)

12 Thank you, ma'am.

13 MS. ONNER: All right. Thank
14 you.

15 CHAIRMAN UPCHURCH: Another
16 speaker on behalf of the application in opposition?

17 (NONE)

18 Seeing none, is there anyone to speak on
19 behalf of the Conditional Use Permit that was granted?

20 Sign in, be sworn.

21 (THEREUPON, THE WITNESS WAS
22 SWORN.)

23 MR. CHARLES SHARPE: Good
24 evening. My name is Chuck Sharpe. I need about three
25 minutes of your time.

1 Although I have resided in the area south
2 of New Haven for 40 years, I do not live in the
3 immediate area of the quarry. So you need to
4 understand I don't have a dog in this fight.

5 I have friends on both sides of the
6 issue, and my hope is that I don't alienate any of
7 them.

8 A few years ago, the Barretts had plans
9 to open a limestone quarry on Baird (ph.) Road. That
10 project was on the path to fruition when there arose
11 such a moaning and wailing and gnashing of teeth that
12 the idea was abandoned.

13 At that time, some of the objections were
14 based on valid concerns that needed to be or already
15 had been addressed. Others were hysterical, the sky
16 is falling, tirades about all the awful things that
17 would befall the area should the quarry open. Others
18 were just outright falsehoods.

19 We in this county and indeed in this
20 nation are blessed to have a system of redress of
21 grievances. That's what this hearing is all about.
22 I'm confident the outcome, whichever way it falls,
23 will be based on fact, logic and history rather than
24 emotion and adrenaline.

25 The Barretts have operated a quarry on

1 Highway 185 at Enochs Road, near me, and have always
2 been good neighbors.

3 Although I've had no contact with Jim
4 Barrett for years, I would expect no less at the new
5 location. If another new quarry were to open up near
6 me, I know I'd have mixed emotions, but I also know
7 that I'd want it operated by the Barrett family.

8 Thank you very much.

9 CHAIRMAN UPCHURCH: Thank you.

10 Questions?

11 (NONE)

12 Thank you.

13 Is there anyone else to speak on behalf
14 of the Barrett Conditional Use Permit? Step forward,
15 sign in and be sworn.

16 (THEREUPON, THE WITNESS WAS
17 SWORN.)

18 MR. STEVEN LAUNE: Steve Laune
19 with Cochran Engineering.

20 I've got a few things to say. Just more
21 factual stuff. I believe John put together a very --
22 very good presentation, and that's wonderful.

23 We live in Franklin County. We have
24 narrow roads. We have curvy roads. We -- they're
25 going to be there, and they're going to stay. Now

1 there's times that they need to be improved. There's
2 times when the County has taken care of it and done
3 that. So that's just an issue that's going to come up
4 and it's going to happen.

5 Any road is subject to anybody's use.
6 They can't dictate who or where you're going to drive
7 or whatever. So they can -- the dump truck drivers or
8 the person buying the rock are going to take their own
9 path however they see fit.

10 And in relation to the school issue,
11 there's trucking a mile down the road. They drive by
12 that school daily I'm sure with larger trucks than
13 what's being hauled from the quarry. So that is just
14 another obstacle that's going to happen, and it's been
15 going on for years, and I don't believe there's been
16 many accidents.

17 As far as the developer financing things,
18 yes. Walmart did come in and they did do that. They
19 paid for the improvements of the interior roads and
20 the signal, and that was part of their development.

21 They were not required to improve three
22 miles of roadway outside of their development.

23 That's -- and I was going to raise a
24 point that Chuck brought up that they've tried this
25 before. They've been opposed before. We're going to

1 have opposition. Everybody is going to have
2 opposition to this, but we're a progressive county. I
3 would assume that we would move in that direction.

4 That's all.

5 CHAIRMAN UPCHURCH: Questions
6 of this witness?

7 (NONE)

8 Thank you.

9 Is there anyone else to speak on behalf
10 of the Conditional Use Permit in support?

11 (NONE)

12 Seeing none, I will permit one person to
13 offer rebuttal. Mr. Hilges, I'm going to guess that's
14 going to be you.

15 MR. JAMES BARRETT: I want to
16 speak on behalf.

17 CHAIRMAN UPCHURCH: Hang on.
18 Step forward.

19 MR. J. BARRETT: James Barrett.

20 CHAIRMAN UPCHURCH: Sign in.

21 (THEREUPON, THE WITNESS WAS
22 SWORN.)

23 MR. J. BARRETT: James Barrett,
24 Barrett Materials.

25 The things that I've got to say is

1 they're talking about the encroachment and everything.
2 We started our quarry, and there's been -- I counted
3 them up. There's been 42 new houses built around our
4 quarries since we started. And if you count Century
5 Farms, that's going to add about another 20. So it'd
6 be 60 houses that's been built around our quarries.

7 And Franklin County Highway Department
8 uses our products, and we've hauled over two million
9 tons up Enochs Knob Road, and it's just a road just
10 like Hoeman Road, just exactly like Hoeman Road. All
11 accident free. There's not been one accident with any
12 of our stuff on them roads, and that's about all I got
13 to say.

14 Thank you.

15 CHAIRMAN UPCHURCH: Okay.

16 Thank you.

17 Anyone else in support of the CUP. I
18 asked earlier, but --

19 (NONE)

20 Okay. I'm going to offer one offer
21 rebuttal.

22 MR. HILGES: Appreciate the
23 opportunity. Once again, John Hilges.

24 I don't disagree. I don't have the
25 statistics that Mr. Barrett just gave as far as not

1 accident -- accident free. We don't have that.

2 I will offer that that's his drivers.

3 Drivers -- this is going to be open to the public. He
4 mentioned Franklin County, even though there was some
5 testimony New Haven would also utilize the rock.

6 Quite frankly, we don't care who uses the rock.

7 We will use rock. We use rock. We all
8 have rock driveways, so we understand that.

9 It's the unfamiliarity with the roads
10 themselves, the horizontal curve issues, the weight
11 restrictions on the slabs, the low-water crossings,
12 the narrowness of the road. For unexperienced
13 drivers, truck drivers, people who are not familiar
14 that will utilize this quarry from Gerald, south of
15 Gerald, within 20 miles that Mr. Barrett testified at
16 the last hearing. Those are the concerns.

17 You know, someone once told me that you
18 can replace a truck, you can repair a tire, you can
19 fix things that are broken. You can't take a life
20 back. We live here. My family has been here since
21 1875. Century Farm. So you know, it's -- it truly
22 hits home to us when safety is paramount. You've not
23 heard one testimony that we don't want a quarry. The
24 sky is not falling. We understand. You've not heard
25 that.

1 What you've heard is the infrastructure
2 as it sits cannot overcome safety concerns. Who is
3 going to take care of that. That whole route was
4 identified by the Barretts. I know we're not
5 expecting someone to fix from Hoeman Road all the way
6 to New Haven, or to fix Hoeman Road all the way to
7 Gerald. That's unreasonable.

8 The fact is this is four miles of county
9 road that is unfunded to maintain. Enochs Knob is
10 point one. Okay. That's a substantial increase.
11 That is all going to come out of this tax base, and we
12 truly feel that there is no plan to maintain that to
13 the level that we've enjoyed it.

14 Again, I've given stats on property
15 values, those types of things, you know, that there's
16 a reason why there's homes that have been constructed
17 that you all saw in your packet. There's a reason.
18 It's because this community that lives out there is
19 tight-knit. Everyone of the people that are -- that
20 are for the quarry, they're my friends. I call them
21 friends. Maybe they don't call me after this hearing,
22 but that's irrelevant to me.

23 I would work hard to get their friendship
24 back. We're going to walk out of here as friends, and
25 that's what makes this great. The use or the

1 infrastructure cannot handle it. Cannot. It is a
2 safety concern. It is against the Unified Land Use
3 Regulations of this county. It's obvious when you
4 can't pass two vehicles on a dump truck road.

5 That doesn't even take an explanation.
6 So thank you.

7 CHAIRMAN UPCHURCH: Thank you
8 very much.

9 We're going to close the testimony at
10 this point in time. Everybody who'd asked for an
11 opportunity to be heard has. I want to repeat for
12 those who sat that frankly as I reviewed my packet,
13 several things that have been given to us were already
14 included in the packet. We're going to include all
15 that in the packet.

16 If the court reviews these, and we
17 understand courts usually do, so again we're just a
18 rail stop along the way. We've had peace with that,
19 this Board has.

20 We're going to take a few minutes here and
21 openly discuss the matter before you. Rarely do we
22 table matters, and to the extent that we ultimately
23 make some motions here which we normally do and move
24 it to a vote, we'll intend to do that.

25 Again, as I indicated earlier, we handle

1 all these pretty informally. We tried to do that
2 tonight. I appreciate the fact that there has got to
3 be 20 people out there that would have gotten on the
4 stand from where you're sitting and said a lot of the
5 things again that we heard, and I appreciate it that
6 everybody recognized that they had been heard at some
7 level and are included in the packet.

8 With those things in mind, I will open it
9 up for discussion among the Board.

10 It appears to my mind's eye that frankly
11 one critical issue is the adequacy of the roads.
12 Apparently from the testimony that we heard tonight,
13 there was a little presentation or little notice with
14 regard to the earlier finding with regard to the
15 adequacy of the roads. There is significant
16 photographic evidence which would indicate an
17 inadequacy of roads.

18 There's also been testimony that other
19 quarries and the Barrett quarry has a good history,
20 and I'm sure they do. We didn't do a formal conflict
21 statement earlier as to this particular application.
22 I feel like I know just about everybody in the room,
23 and the Barrett quarry is just down the road from me,
24 but it's feet from a state highway, not a county road.

25 From these photos, it appears that some

1 of these roadways that would logically be used are
2 gravel roads or paved roads. That is concerning for
3 me, but I'm just one person on the Board.

4 There are other concerns with regard to
5 property values. We hear a lot of that. There's some
6 anecdote law brings in our packet about property
7 values. We recognize that, and we hear that in many,
8 many cases, and we will -- we try to take that into
9 account.

10 With that, I'm going to open it up to the
11 other Board for thoughts and impressions before we try
12 to move forward this evening.

13 COMMISSIONER THATCHER: The
14 history here has been to look and hear the evidence as
15 presented at these hearings.

16 I have not been out to Hoeman Road or
17 Excelsior Road. I was out there about three months
18 ago, but I wasn't paying attention to where this
19 quarry goes.

20 I know it's God's country out there.
21 It's very pretty, but the roads are narrow and the
22 roads are, well, they are gravel.

23 I am not concerned so much with the
24 environmental effects that -- they'll be some dust in
25 the summertime, yes. But I don't think that that is a

1 grave concern. It is a concern, but not a grave
2 concern.

3 I'm not concerned in terms of the
4 evaluation of the surrounding properties. I think
5 most of the properties are larger tracts. They're not
6 smaller tracts, with the exception of Mr. -- I forget
7 the gentleman's name, but he's within 500 feet. And
8 yes he will be somewhat affected by this, absolutely.

9 My biggest concern is really the roads
10 and accessibility of the roads. I'm familiar with
11 River Stone Quarry. They're off of a paved road.
12 Enochs Knob is obviously off of a -- very close to a
13 paved road. All the other quarries that I'm aware of
14 I believe are very close to a paved road and not what
15 I consider to be a third level road or a road that's a
16 back road. Little Tavern Road. I'm familiar with the
17 eastern end of the county. Little Tavern Road or a
18 minor road. So that is a big concern to me.

19 I did not get a full understanding this
20 even of those roads and how they accessed the gravel
21 of the paved roads. In other words, I don't have a
22 full understanding of how the gravel roads tie into
23 the paved roads. I didn't see anything here tonight
24 that really gave me a good clear concise picture of
25 that.

1 So I would like to take a little time and
2 maybe look at this plat, you know.

3 John, are the gravel roads noted on here
4 at all?

5 MR. HILGES: Yeah, the --

6 COMMISSIONER THATCHER: This
7 was not in my packet.

8 MR. HILGES: Yes, the asphalt
9 roads are called out as asphalt, and the rock roads
10 are called out as limestone rock.

11 COMMISSIONER THATCHER: Am I
12 incorrect? This was not in our packet.

13 MR. HILGES: It was not in your
14 packet. Yellow there is the proposed haul road as
15 presented by the applicant. Again, not from me.

16 Blue is the alternate haul routes that
17 would cross over the slabs.

18 COMMISSIONER THATCHER: Okay.
19 So just walk me through it if you don't mind.

20 MR. HILGES: Yeah. So Highway
21 Y, which is a MODOT highway. Okay. Very similar to
22 185 or Highway 47. Okay, MODOT maintained highway.
23 That is an asphalt road. Okay.

24 Then Excelsior Road is an asphalt road.
25 It's called out right there as asphalt. It traverses

1 down to the intersection with Hoeman Road, which is a
2 limestone rock road. Okay. Hoeman Road then would go
3 to the quarry. Again, this is identified by that.

4 It would go through to the quarry,
5 correct. The secondary haul route again from the
6 south as we presented, would cross over one of the
7 slabs, Hoeman Road slab. Okay.

8 In addition, there would be another haul
9 route from Detmold Road, which is also a limestone
10 rock road. Right there. It calls it out right there.
11 Okay.

12 So everything is called out as asphalt
13 and limestone rock.

14 COMMISSIONER THATCHER: In
15 terms of distances, for example, that is what, a mile?

16 MR. HILGES: It's approximately
17 a mile.

18 COMMISSIONER THATCHER: If you
19 go back up to Hoeman Road, it's how far?

20 MR. HILGES: It's 1.3. Yeah,
21 1.3.

22 COMMISSIONER THATCHER: I'm
23 talking about to Excelsior Road.

24 MR. HILGES: Yeah, 1.3
25 approximately.

1 COMMISSIONER THATCHER: Down
2 here to --
3 MR. HILGES: Stone Church would
4 further south, and that is also asphalt.
5 COMMISSIONER THATCHER: Stone
6 Church is asphalt?
7 MR. HILGES: Correct. And it
8 accesses Highway Y as it goes into Gerald.
9 COMMISSIONER THATCHER: So we
10 really have about a mile and a half in any direction
11 to go over this gravel; is that correct?
12 MR. HILGES: That is fair, yes.
13 Relatively speaking. And the two alternates again are
14 over those slabs, low-water crossings.
15 COMMISSIONER THATCHER: Okay.
16 Thank you very much.
17 MR. HILGES: You're welcome.
18 With that, I don't need to comment for a
19 while.
20 CHAIRMAN UPCHURCH: Okay.
21 Discussion from the rest of the Board?
22 COMMISSIONER HOFF: I'd like to
23 hear from the County Road Supervisor.
24 MS. EAGAN: We have the Highway
25 Administrator here.

1 COMMISSIONER HOFF: I would
2 like to hear from him.

3 CHAIRMAN UPCHURCH: It's like
4 herding cats tonight, folks.

5 Sign in and be sworn.

6 (THEREUPON, THE WITNESS WAS
7 SWORN.)

8 MR. JIM GRUTSCH: Thank you.
9 My name is Jim Grutsch. I am the Highway
10 Administrator for Franklin County.

11 COMMISSIONER HOFF: Could you
12 help me understand why or what is the plans of the
13 County for this road if this planned quarry goes in?

14 MR. GRUTSCH: Regardless of
15 whether the quarry goes in or not, Hoeman Road, which
16 is a rock road, will be graded and additional rock
17 will be installed to Hoeman Road. Due to the weather
18 conditions we've had, during testimony, one of the
19 gentlemen stated that there was a highway grader that
20 was stuck down there.

21 That was the result of myself visiting
22 the site with the petitioner for the petition. I
23 looked at that with him, and saw the condition of it.
24 I had one of my graders go down there, and indeed he
25 did get stuck. I shouldn't have sent him down there.

1 It was too wet, but I wanted to try and get it cleaned
2 up.

3 But as soon as it does dry up and we get
4 out of the wet and snowy conditions, as in years past,
5 we will go down grade it and re-rock it and stabilize
6 it because before long farmers will want to be
7 planting in the fields, and their crops grow. Then
8 they want to harvest those and get the crops out.

9 If the --

10 CHAIRMAN UPCHURCH: You talking
11 about Hoeman Road?

12 MR. GRUTSCH: Hoeman Road, yes.
13 Hoeman Road is 20 feet in places, 16 feet
14 wide in places. There's some places it's a little bit
15 narrower than that.

16 If a business goes in down there as a
17 quarry, I would imagine that due to use and loads, we
18 would install more rock on it. Just as we do anywhere
19 else in the county if the road shows signs of
20 distress, we do go back in and repair those.

21 Similar to Enochs Knob Road where the
22 quarry is now, we do grade that. We install rock on
23 it. There is an area at the entrance that's on
24 Highway 185 that was shown in the aerial photos over
25 the past four to five years that showed distress.

1 That distressed area did not grow any bigger. It's
2 just a soft area that continuously has to maintained.

3 We do go in there occasionally and dig it
4 out and repair it. Due to the heavy traffic, we don't
5 go in there and pave Enochs Knob because of the hard
6 turning traffic, and it would take an awful lot to try
7 and repair that for the use that it's getting.

8 CHAIRMAN UPCHURCH: I'm going
9 to stop you there for just a minute just so we can
10 clear up the record.

11 And I'm familiar with that quarry. It's
12 sort of in my back yard, and you referred to Enochs
13 Knob. From there to the quarry can't be a tenth of a
14 mile.

15 MR. GRUTSCH: It is. It's
16 about a tenth of a mile.

17 CHAIRMAN UPCHURCH: Okay. And
18 it comes right out on a state highway, which is
19 Highway 185?

20 MR. GRUTSCH: Correct.

21 CHAIRMAN UPCHURCH: Maintained
22 by the State?

23 MR. GRUTSCH: Correct.

24 CHAIRMAN UPCHURCH: As wide as
25 any state two-laner?

1 MR. GRUTSCH: Yes, and it's
2 very similar to Highway Y -- I'm sorry, very similar
3 to Excelsior Road in that it's a paved road.

4 CHAIRMAN UPCHURCH: Okay.

5 MR. GRUTSCH: I have all the
6 confidence in the world that Excelsior Road, the
7 county road that we maintain and pave, will hold up to
8 any traffic that's put on it. Grain trucks use it.
9 Cattle trucks use it. School buses, trash trucks use
10 it, and it shows no signs of distress whatsoever.

11 CHAIRMAN UPCHURCH: But the
12 gravel roads associated with this particular location
13 which has been described as a quarry those gravel
14 roads, there's no plans at this point in time by the
15 County to pave those roads?

16 MR. GRUTSCH: No, we would not
17 pave that road any time in the near future.

18 CHAIRMAN UPCHURCH: And in
19 fact, there's no plan afoot to widen those roads to
20 more than 16 feet which they are at some locations?

21 MR. GRUTSCH: If it became
22 obvious that it was a traffic -- if it was
23 compromising safety, we would widen that to at least
24 16 feet to 18 feet because they're -- in his pictures,
25 he did show that there were some areas where it

1 probably was less than 16. I don't know if that was
2 below the proposed quarry entrance. But if it did
3 need to be widened, we would take care of that.

4 CHAIRMAN UPCHURCH: Okay.

5 MR. GRUTSCH: To address the
6 two slabs, the broken slab crossing its own creek, it
7 would be my recommendation I would seek an engineer's
8 report on those, and if the engineering report comes
9 back that those are substandard, I would post to those
10 where loaded trucks could not use those.

11 An empty truck could come and go to the
12 quarry, but a loaded truck could not. You would be in
13 violation. Just like all the other bridges in
14 Franklin County that are posted, we would probably end
15 up having a three of five ton posting on it,
16 especially if there's rebar showing.

17 CHAIRMAN UPCHURCH: There's no
18 current plan to improve those slabs into bridges?

19 MR. GRUTSCH: No. We really
20 discourage and the Commission has discouraged us to
21 improve any sort of slab crossings and creeks.

22 MODOT, in their funding programs, do not
23 endorse that at all.

24 One of the other things that I may point
25 out. The location of this proposed quarry is

1 advantageous to Franklin County in that the location
2 services about 150 square miles of the quarry closer
3 and saves on hauling of material.

4 And that is an economic help to the
5 County. I know there are other costs involved in it,
6 but I did want to point that out.

7 Yes?

8 COMMISSIONER HOFF: Will you
9 please restate that statement because I didn't
10 understand exactly what you're saying.

11 MR. GRUTSCH: Well, right now
12 the closest quarry to the northwest portion of
13 Franklin County is the New Haven quarry, and this
14 quarry for the western and northwestern part of the
15 county would be closer. So for me to haul the
16 thousands of tons of rock that I use every year, it
17 would be a shorter haul.

18 So the County would save in hauling
19 charges.

20 COMMISSIONER SCHRIEWER: You
21 mentioned safety concerns would maybe lead you to add
22 widening those roads. To what extent would something
23 need to happen, or would these people have to amass a
24 petition of sorts to demonstrate that safety concern,
25 because right now, obviously the people who are living

1 around there have major concerns about it? And you're
2 saying well, if it becomes a problem, we'll take care
3 of it.

4 I think they're saying there's going to
5 be a problem. So how do we address this?

6 MR. GRUTSCH: I would suggest
7 that during the -- if the quarry is allowed to move
8 forward, the County would examine the road and make
9 sure that there is a minimum of 18 foot width of rock
10 road, compacted rock road.

11 And I could commit to that from the
12 quarry entrance going out to Excelsior Road.

13 COMMISSIONER SCHRIEWER: Then I
14 guess the next question is on kind of a technicality.
15 So what do we do to have that as a condition as we
16 discussed? I think it's more for Scottie if I'm not
17 mistaken.

18 MS. EAGAN: It's my
19 understanding with at least our previous legal counsel
20 -- I never addressed it with our current legal counsel
21 -- we can't put conditions on applicants to improve
22 county roads unless it's testified by the applicant at
23 the hearing that they know there's a problem, they're
24 able to do it, so on and so forth.

25 If Jim is offering it, that's a gray

1 area.

2 COMMISSIONER SCHRIEWER: I

3 understand.

4 MR. GRUTSCH: It's quite
5 similar to other areas in the county. When we are
6 shown proof and evidence that areas are insufficient
7 for passing, the brush is grown up, it needs to be cut
8 back, the rock surface needs to be widened, we address
9 that and we do take care of it.

10 COMMISSIONER SCHRIEWER: And
11 you acknowledging that you've had issues with actually
12 maintaining that road just as of recent --

13 (CROSSTALK)

14 MR. GRUTSCH: I'm sorry?

15 COMMISSIONER SCHRIEWER: -- and
16 probably some history of it?

17 MR. GRUTSCH: We do because of
18 the wet weather, and the limited use that the road
19 gets. A rock road, if it's used constantly, it will
20 be compacted much better and it will stand up better
21 than one that's in limited use. And then with all of
22 the activity and the wet, cold weather, freeze and
23 thaw, you will start to develop a soft area.

24 But we address that at the County level
25 and take care of that roadway. And we would not do --

1 and I'm not trying to say we would do that to promote
2 the -- your approval of the quarry. We will do that
3 because it's a roadway that the County owns and
4 maintains, and we will take care of our roads.

5 CHAIRMAN UPCHURCH: Further
6 questions of this witness?

7 COMMISSIONER THATCHER: So
8 correct me if I'm wrong. So if you've got 16-foot
9 areas, if the quarry were to open, the County would
10 then improve that road to 18 foot?

11 MR. GRUTSCH: From the quarry
12 entrance out to Excelsior Road.

13 COMMISSIONER THATCHER: Okay.

14 MR. GRUTSCH: Hoeman Road goes
15 on further past that, and it's been that way forever.

16 COMMISSIONER THATCHER: Uh-huh.

17 MR. GRUTSCH: So I don't think
18 there's a safety issue past that.

19 COMMISSIONER THATCHER: The
20 other roads that come off the quarry as well, are they
21 also 16 or 18 foot in width? Once again I'm trying to
22 get a good grasp of it.

23 MR. GRUTSCH: You have Ditmold
24 Road, and if that -- if they're intending to use the
25 creek crossing without replacing that -- and we're not

1 going to replace it -- I would not allow loaded trucks
2 to head out that way.

3 COMMISSIONER THATCHER: All
4 right. Thank you.

5 CHAIRMAN UPCHURCH: Other
6 questions?

7 COMMISSIONER HOFF: This when
8 we were looking at these maps and showing the flooding
9 of these roads, that was, I take it, this road that
10 you just talked about that has the slab that you're
11 not going to repair, or --

12 MR. GRUTSCH: That's correct.
13 That slab was under water. Substantially under water,
14 much deeper than what was shown in those pictures
15 because the slab was in the creek, and that was
16 probably six foot higher than the pictures.

17 COMMISSIONER HOFF: Well, I'm
18 more concerned about the roadway.

19 MR. GRUTSCH: Uh-huh.

20 COMMISSIONER HOFF: That's the
21 roadway along that creek that was shown in that
22 picture that showed that it was under water the whole
23 time?

24 MR. GRUTSCH: Yes.

25 COMMISSIONER HOFF: And it

1 looked narrow also in that area.

2 MR. GRUTSCH: It is narrow and
3 very sandy. And that roadway services the crop ground
4 down -- it's a four-wheel drive or automobile can make
5 it more than a loaded dump truck. A loaded dump truck
6 will have a difficult time.

7 COMMISSIONER HOFF: Okay.

8 CHAIRMAN UPCHURCH: Any other
9 questions?

10 (NONE)

11 Thank you.

12 MR. GRUTSCH: Thank you.

13 CHAIRMAN UPCHURCH: We'll
14 continue our discussion. I'll just bluntly state it
15 sort of escapes my personal logic that we would have a
16 quarry -- and again it's not personal -- the Barrett
17 quarry near me I think operates well, but it's so
18 neatly adjacent to a state highway, paved, I forget
19 the speed limit, but again it's well maintained.

20 I think the record that is before to my
21 mind's eye, but I'm just one of the Board, is that the
22 portions of all or most of these roads are gravel,
23 narrow, with the math I've heard, you literally can't
24 meet a quarry truck on these roads for some
25 significant portion.

1 So I'm -- from a logical standpoint
2 alone, I'm gravely concerned with the Conditional Use
3 Permit that granted with any of a number of
4 conditions.

5 Thoughts or impressions of others?

6 COMMISSIONER THATCHER: So
7 which comes first, the chicken or the egg? If the
8 road is deficient, then at what point does it become
9 efficient? So it's up to the County to do that, and
10 they may --

11 CHAIRMAN UPCHURCH: Well, as we
12 know from prior rulings that we've made, denials of
13 applications are not a permanent denial. And if
14 circumstances change, people routinely are free to
15 make applications.

16 COMMISSIONER THATCHER: One
17 very important point that Jim made tonight was that
18 the County kind of needs rock in that area. People
19 need rock in that area. So we've got a need, but
20 again we don't have a way to safely move the material.

21 So that's --

22 CHAIRMAN UPCHURCH: We've got a
23 need to save money as opposed to a safety issue. I'm
24 not sure that's in equal balance.

25 COMMISSIONER THATCHER: No, I'm

1 not saying it is equal. What I'm saying is that it
2 puts more effort on the part to improve what's there,
3 and rock is there today and will be there tomorrow.

4 The question is at what point does the
5 road get improved so the rock can be moved safely?

6 CHAIRMAN UPCHURCH: And I don't
7 know that.

8 COMMISSIONER THATCHER: That's
9 kind of my crux.

10 CHAIRMAN UPCHURCH: Justin?

11 COMMISSIONER HEAD: We've dealt
12 with this issue before, and I didn't like it very much
13 the last time, and here we are again.

14 I wish one of you guys would talk me out
15 of doing this. I'm glad, Steve, you asked for
16 questions on the road because answered a lot in my
17 mind.

18 If I had to pick, if there was a quarry
19 to goes in by my house, I would pick no, but that's
20 really not what we're here to do. It's a pretty
21 limited issue. The County has already said this use
22 is authorized in that area, period.

23 The County has already said that this
24 application for conditional use permit complies with
25 Section 79 and Section 91, period.

1 I think it all boils down to our ability
2 to deny really under one sentence. If we think that
3 there's clear and convincing evidence submitted at the
4 hearing that the use of that road would be
5 significantly detrimental to public safety.

6 That's a tough call.

7 COMMISSIONER SCHRIEWER: And
8 I'm kind of on the -- in a similar mind, but to me the
9 overbearing and I get the idea that the roads can be
10 used for many purposes and we can't necessarily
11 restrict what roads are used for, but the idea that
12 there's three ways in and out and we're concerned
13 about the main one, and the others are worse is
14 something really starts to hit on similar to you
15 talking of public health, safety but just general
16 welfare.

17 I think right now it is a fiscal concept
18 as you were discussing. It's some sort of money in
19 the future for the County to be concerned about, and
20 that's not really something for us to be worried about
21 to be completely honest.

22 But it is something of the general
23 welfare of the county, and I think it starts to hit
24 that point, and I think this is what we've battled
25 about when this sort of topic was up before is it

1 significantly detrimental to these topics.

2 And to me it starts to really hit that
3 point where the people who are going to be on these
4 roads are majorly concerned about it, and it's not
5 just one way that we're talking about. It's three
6 ways, and to me how are we going to stop trucks from
7 only using that appropriate route? We aren't.

8 We basically got told we're not, and to
9 me all of a sudden it becomes a concern for the people
10 in that area. I get that we're here to kind of
11 discussing the county as a whole, but to me this is
12 actually going to impact those people. And I start to
13 side with the appellant.

14 CHAIRMAN UPCHURCH: Steven?

15 COMMISSIONER HOFF: I agree
16 with Derek that public safety is the only reason we
17 can deny this permit. There is County zoning has
18 welcomed this permit, but my concern is unlike the
19 other quarries that we have discussed before, is we're
20 dealing with a gravel road that's insufficient to what
21 is needed to meet county codes. Just put it that way.

22 And just because we deny it today,
23 doesn't mean that these things can't be repaired or
24 fixed, and this be brought back to us a year or two
25 years down the road.

1 But in the meantime, the County is going
2 to have to address the issue of the roads before we
3 can -- before I feel like I can support this quarry. I
4 do know that this quarry is needed.

5 As this county grows, we got to have
6 rock. But we also got to look at the public safety of
7 every individual in this area. And what I can see and
8 what was presented tonight, that road is not wide
9 enough.

10 And it doesn't look like, even with the
11 County grader getting stuck in it, that it has a base
12 that's underneath that that it's going to be a
13 substantial cost to rebuild that road, to put a good
14 base underneath it to widen it even.

15 CHAIRMAN UPCHURCH: If no one
16 wishes to offer any further discussion on the record,
17 I'm going to make an offer a motion which, of course,
18 would require a second or a modification.

19 I'm going to offer a motion for the
20 denial of the Conditional Use Permit based upon the
21 record that is before us.

22 COMMISSIONER HOFF: I'll second
23 that.

24 CHAIRMAN UPCHURCH: There has
25 been a motion and a second to deny the Conditional Use

1 Permit, and a second by Steven. Okay.

2 COMMISSIONER SCHRIEWER: Just
3 as a clarifying thing, on the notes that in theory I
4 guess we're reversing their decision. Do we need to
5 note that in there?

6 MS. EAGAN: I would appreciate
7 it if you made that motion to reverse.

8 CHAIRMAN UPCHURCH: To reverse?

9 MS. EAGAN: Uh-huh, the
10 decision of the Conditional Use Permit.

11 CHAIRMAN UPCHURCH: To reverse
12 the ruling authorizing the Conditional Use Permit, and
13 I will clarify my motion in that regard. Do I still
14 have a second?

15 COMMISSIONER HOFF: Second.

16 CHAIRMAN UPCHURCH: I have a
17 second. I believe we have a motion and a second.

18 Scottie, you need to call that for a
19 vote.

20 MS. EAGAN: Justin Head?

21 COMMISSIONER HEAD: So a yes
22 vote is in favor of?

23 MS. EAGAN: Reversing.

24 COMMISSIONER HEAD: Of
25 reversing. No.

1 MS. EAGAN: Steve Hoff?
2 COMMISSIONER HOFF: Can I
3 clarify. Can you read the motion for us again. I'm
4 sorry. I just want to be --
5 MS. EAGAN: Well, I can tell
6 you I didn't write it exactly as Gordon said it, but I
7 said it's a motion to reverse the approval of the
8 Conditional Use Permit. So a vote in favor of the
9 reversal would be a yes.
10 COMMISSIONER HOFF: Yes.
11 MS. EAGAN: Derek Schriewer?
12 COMMISSIONER SCHRIEWER: Yes.
13 MS. EAGAN: Fred Thatcher?
14 COMMISSIONER THATCHER: Yes.
15 MS. EAGAN: Gordon Upchurch?
16 CHAIRMAN UPCHURCH: Yes.
17 MS. EAGAN: Okay. With four in
18 favor of the reversal of the approval of the CUP, the
19 appeal has been approved.
20 CHAIRMAN UPCHURCH: Correct.
21 The appeal has been approved and the Conditional Use
22 Permit has been --
23 MS. EAGAN: Denied.
24 CHAIRMAN UPCHURCH: -- denied.
25 MS. EAGAN: Correct.

1 CHAIRMAN UPCHURCH: We're going
2 to take a very short break. For those of you who
3 aren't here on the second matter, thank you for being
4 civil people which we live in Franklin County and we
5 can do these things and not be like daytime TV.

6 But if you will leave somewhat briskly,
7 we have other matters and we have families to get to
8 also.

9 (THEREUPON, A BREAK WAS TAKEN
10 AT 9:01 P.M.; AFTER WHICH, THE
11 PROCEEDINGS CONTINUED AT 9:10 P.M.
12 AS FOLLOWS:)

13 We have another matter on the agenda this
14 evening. You all can take a seat or leave. It's
15 entirely up to you, and I think we will start with a
16 staff report.

17 MS. ZIELKE: Actually I will
18 read the hearing procedures again first.

19 CHAIRMAN UPCHURCH: Nichole
20 Zielke?

21 MS. ZIELKE: All right.

22 Tonight's Board of Zoning Adjustment
23 hearing is governed by the Franklin County Land Use
24 Regulations of 2001.

25 At this time, I would like to place into

1 the record these Regulations as Exhibit A, the
2 official Zoning Map as Exhibit B, the official Master
3 Plan as Exhibit C, and the case file for each case as
4 Exhibit D for all the cases to be heard at this
5 hearing.

6 (THEREUPON, THE EVIDENCE WAS
7 MARKED FOR IDENTIFICATION AND
8 SUBMITTED FOR THE RECORD AS
9 EXHIBITS A, B, C, AND D.)

10 The Board of Zoning Adjustment will
11 address each case as they are listed on the agenda.
12 As each case is opened for hearing, a staff report
13 will first be read to the Board, followed by any
14 questions for the staff.

15 Then if anyone in the audience would like
16 to speak or comment during this public hearing, they
17 must first print their name on the sign-in sheet
18 provided, and then be sworn in.

19 When it is your turn to speak, you will
20 come to the front of the room to address the Board and
21 only the Board, not anyone in the audience, with any
22 comments.

23 At the conclusion of all comments,
24 questions and discussion concerning each case, the
25 public hearing for that case will conclude and the

1 Board of Zoning Adjustment will proceed with a
2 decision.

3 Any decision by the Board may be
4 appealed. If anyone desires to appeal a decision made
5 by the Board of Zoning Adjustment, they need to submit
6 it to Circuit Court.

7 CHAIRMAN UPCHURCH: Thank you.

8 And as we did with the earlier matter,
9 we'll permit the applicant to start, and who is first
10 to speak on behalf of the applicant?

11 MS. ZIELKE: Gordon, I'm sorry.

12 I have a staff report to read.

13 CHAIRMAN UPCHURCH: I'm sorry.
14 I'm getting ahead of myself.

15 MS. ZIELKE: Okay. So this is
16 about File 200034 for Deborah B. Oliver.

17 The applicant is appealing the decision
18 of the Planning Director to deny a Special Occasion
19 Permit, File 190045 to Deborah Baker-Oliver/333
20 Vineyard.

21 The property is located at 3665 Sunny
22 Road, approximately .25 miles south of Highway KK in
23 Lyon Township.

24 THE FACTS: On September 30, 2019, our
25 office received a complete application for a Special

1 Occasion Permit from Deborah Baker-Oliver/333 Vineyard
2 to host special occasions for a maximum of 300 people.

3 On October 10, 2019, the Planning and
4 Zoning Department received the Building Permit for an
5 event center with a maximum occupancy of more 500 in
6 the banquet space and indoor/outdoor room.

7 On January 28, 2020, the Planning
8 Director issued a letter denying the Special Occasion
9 Permit as submitted.

10 The property for the Special Occasion
11 Permit is approximately 24 acres in size. The
12 property is zoned W, previously NUA, which would allow
13 for Special Occasion Permits with 300 guests or less.
14 Events with more than 300 guests expected would
15 require a Conditional Use Permit.

16 The area surrounding the proposed site is
17 zoned W, previously NUA. The property is surrounded
18 by low-density residential land and undeveloped land.

19 The property has access to Sunny Road.
20 This is a County maintained road with a right-of-way
21 width that varies between 45 feet and 60 feet in
22 width.

23 And Scottie has a statement for her
24 portion of this staff comment that she would like to
25 read.

1 MS. EAGAN: Okay. So I'm going
2 to give you guys the staff comments. Bear with me.
3 It's a little long. I'm going to start with a little
4 history of the Special Occasion Regulations, how they
5 came to Franklin County, and then we'll get into the
6 history of the Special Occasion Permit file.

7 STAFF COMMENTS: So in 2017, the County
8 Commission passed regulations pertaining to Special
9 Occasion Permits. Special Occasion Permits are
10 permitted in NUA now W, CD now E, CA now R, and CA3
11 now A if the event is less than 300 people.

12 Any event that is expected to exceed an
13 attendance of 300 people would require a Conditional
14 Use Permit.

15 So how the process works when we get an
16 application for a special occasion is as follows:

17 So the applicants submit an application,
18 a site plan, a lighting plan, and other required
19 materials to the Planning and Zoning Department.
20 Planning and Zoning reviews submitted items for
21 completeness, and corresponds with the applicant on
22 any issues.

23 Once all issues are taken care of, the
24 Planning Director issues a letter indicating
25 contingent approval based on the applicants receiving

1 a Commercial Building Permit.

2 Once the applicants submit their Building
3 Permit application, the Planning Department prepares
4 the Special Occasion Permit with the Building Permit
5 application, including the site plan and number of
6 occupants. And if everything looks the same, the
7 Planning Department signs off on the permit and then
8 it is sent back to the Building Department.

9 Once the Commercial Building Permit is
10 issued, the Planning Director will then issue an
11 official Special Occasion Permit.

12 So now we'll get into the actual Special
13 Occasion Permit file.

14 So on February 21, 2019, the applicant
15 submitted an application and fees for a Special
16 Occasion Permit.

17 The applicant was informed that we need a
18 site plan as well as other required information before
19 we would be able to process their application.

20 As of mid September 2019, the Planning
21 Director still hadn't received the information that
22 was requested back on February 21st, and the Planning
23 Director had staff call the applicant and inform them
24 that we were still waiting on the rest of the
25 information.

1 On September 30, 2019, we received the
2 rest of the information, and the Planner Nichole
3 Zielke started processing the application.

4 On October 10, 2019, the Code Enforcement
5 Officer received the Building Permit for the even
6 space.

7 Nichole reviewed the application and
8 issued a letter to the applicant indicating that
9 information was either missing or incorrect on their
10 application and/or site plan.

11 Nichole received a phone call from Mr.
12 Baker after this letter about how to fix the issues,
13 one being a setback requirement that was not being met
14 at the time.

15 Nichole talked possibilities with Mr.
16 Baker, and at one point, it was brought up the idea of
17 getting a Conditional Use Permit in hopes that
18 Planning and Zoning would lessen the setbacks.

19 At this point, I informed Nichole that
20 the applicant cannot choose to get a CUP and that we
21 had a similar issue in the past that I had talked to
22 legal counsel about.

23 It was decided that it's either a Special
24 Occasion Permit for less than 300 or a Conditional Use
25 Permit for over 300. I told her that if their

1 building isn't designed to have more than 300 guests,
2 then they couldn't go the CUP route.

3 I told her since we have the building
4 plans, she should review them and then decide.

5 When we looked at the Building Permit, it
6 was discovered that the maximum occupancy for the
7 space was over 500.

8 We set up a meeting with our County
9 Counselor Mark Piontek and the Building Commissioner
10 Bill Plack (ph.) to go over all the file.

11 We explained about the Special Occasion
12 Permit application stating a maximum of 300 people,
13 that the building could hold over 500 in just the
14 spaces dedicated to the event.

15 Bill Plack (ph.) explained they came up
16 with this number based on the Building Code
17 requirement of 1 person per 15 square feet in the A2
18 designation for tables and chairs.

19 After we showed Mark Piontek the file, he
20 agreed that the applicant would either need to revise
21 the site plan and building plan to meet the Special
22 Occasion Permit regulations, or he could apply for a
23 CUP, but he couldn't run it concurrently.

24 Bill asked about the possibility of
25 having the applicant post in the building that they

1 had a maximum capacity of 300 people. Mark Piontek
2 said no because there's no way to enforce that limit.

3 After the meeting, Nichole issued a
4 response to the applicant indicating the issues with
5 the building site and told the applicant Mark's
6 opinion.

7 Then on December 20, 2019 at 9:00 a.m.,
8 Nichole and I met with Commissioner Brinker, Bill
9 Plack (ph.), Jim Grutsch, the Highway Administrator,
10 Dan Baker, Deborah Baker-Oliver, and Dave Mundik
11 (ph.). In that meeting, we discussed all the issues
12 of the application, including the setbacks, surface
13 material, other building permit applications, et
14 cetera.

15 At the end of the meeting, we knew Jim
16 was going to sign off on their surface material, and
17 that meant we could sign off on their Building Permit
18 application.

19 In regards to the Special Occasion
20 Permit, it was decided they either needed to amend
21 their site plan and building for the maximum 300
22 people or apply for the CUP.

23 The option to post something in the event
24 space came up again at this meeting, and it was
25 discussed that per legal counsel we would not accept

1 this because there is no way to enforce it.

2 Later that same day, Nichole received a
3 phone call from the architect of the project asking
4 questions about what is happening and what are the
5 options.

6 During this conversation, it was brought
7 up about an exemption in the Building Code. Nichole
8 informed him he would need to speak with the Building
9 Department.

10 The same day Nichole and Bill Plack (ph.)
11 received an e-mail from the architect with a letter
12 attached requesting an exemption in the Building Code,
13 which is included in your packets.

14 Nichole sent Mark Piontek an e-mail and
15 included the request from the architect wanting to
16 know Mark's opinion on the request.

17 Then on January 2nd, the applicants came
18 into our office to talk with Nichole and the Building
19 Department.

20 On January 3, 2020, we received an e-mail
21 from Mark Piontek, also included in your packets,
22 re-enforcing his position that we have no way of
23 enforcing the lower limit allowed by the Special
24 Occasion Permit.

25 He states the only way of ensuring that

1 the limits of the permit aren't exceeded is to have a
2 structure designed for the lower limit or apply for a
3 CUP.

4 On Monday, January 6, 2020, I sent an
5 e-mail to Mr. Baker, Mrs. Baker-Oliver, the engineer
6 of the project and the architect of the project
7 explaining that I was now taking over the file and
8 laid out four options for the applicant. This e-mail
9 also is included in your packet.

10 On January 7, 2020, I received a reply
11 from Mr. Baker, also in your packet, questioning our
12 regulations. Mr. Baker copied in Mrs. Baker-Oliver
13 and Commissioner Brinker on that one.

14 On January 28th, after the Commission
15 meeting, Nichole and I met with all three County
16 Commissions, Mark Piontek, Bill Plack (ph.), Dan Baker
17 and Deborah Baker-Oliver. It was once again discussed
18 about the issues between Special Occasion Permit
19 applications and the building occupancy.

20 It was during this meeting Mark Piontek
21 explained the correct course of action would be for
22 the applicants to apply for an appeal with the Board
23 of Zoning Adjustment if they did not agree with my
24 decision.

25 The applicants were requesting for the

1 Commission to grant them some sort of variance with
2 the Code. I was instructed to issue an official
3 letter of denial that day and to keep the BOZA
4 applications open until Friday to make sure they met
5 the February agenda.

6 CHAIRMAN UPCHURCH: Are we all
7 in, all done?

8 MS. ZIELKE: Yes.

9 CHAIRMAN UPCHURCH: Okay. And
10 so I'm clear, we don't need a player card, from my
11 memory going way back, which I don't think I've ever
12 seen on this Board, is when a zoning officer or an
13 official issues an opinion and someone disputes that,
14 they can come before that Board.

15 So it's my understanding that that is
16 exactly what's before the Board, is the opinion that
17 has been issued denying their request. Is my
18 understanding correct?

19 MS. ZIELKE: That is correct.

20 CHAIRMAN UPCHURCH: Okay.

21 Anything further from the Planning and
22 Zoning Department to be read into the record or
23 otherwise at this time? And if not, I'm going to
24 permit the applicant now to step up.

25 MS. ZIELKE: No, Chairman,

1 thank you.

2 CHAIRMAN UPCHURCH: Thank you.

3 Sign in and be sworn.

4 MR. KURT VOSS: Good evening,
5 your Honor. I have signed in. Kurt Voss.

6 (THEREUPON, THE WITNESS WAS
7 SWORN.)

8 Again, my name is Kurt Voss, and I
9 represent I think they're the appellants in this case
10 because it is a pretty rare case for an appeal of a
11 decision of the Planning Director.

12 We're not going to talk about conditional
13 use permits. I promise we're not going to talk about
14 conditions. It's a very narrow legal issue that we're
15 here tonight to talk about, and I gave you a brief on
16 it before. It just kind of outlines the position of
17 the appellants, and all of it is found in Section 237
18 of the Code. It's in one paragraph.

19 And as Scottie and Nichole indicated,
20 special occasion permits are new to the County. But
21 what they're confusing and the reason we're appealing
22 this Special Occupancy -- or special occasion permits
23 is limited by attendees, attendees.

24 If you read in 237(c)(2) if you're going
25 to have less than 300 attendees, you get the permit

1 once you meet every other requirement.

2 It doesn't matter whether your building
3 is ten -- can hold 10,000 people or it can hold 500
4 people, it comes -- they're confusing occupancy, which
5 is a fire marshal code, which is how many people can
6 stand in a building and touch each other, versus
7 attendees.

8 My folks have indicated, and they will
9 testify tonight, that they are aware of the code
10 requirements, that it's limited to 300 attendees.

11 If they exceed 300 attendees under the
12 SOP permit, they have committed a crime. It's a Class
13 A misdemeanor, and with all due respect to Mr.
14 Piontek, there is nothing in 237 that gives the
15 Planning Director the discretion to say I've chosen to
16 deny your permit, your SOP permit for less than 300
17 attendees because your building might hold 550
18 people. That's what our building plans say, but we're
19 not asking for a permit to have a special occasion of
20 more than 300 attendees. They know that.

21 With all due respect to Mr. Piontek, I've
22 included in the brief Article 5, which is the
23 enforcement mechanism. Anytime that the County
24 receives a complaint, the Planning Director or the
25 code enforcement official can investigate that.

1 They can file a charge against the people
2 that violated it. If you recall, that's why I got the
3 Franklin County Municipal Court was to enforce code
4 violations. But to sit here and call my clients
5 somehow that they're -- we think you might break the
6 law, so we're not going to give you a permit, it's not
7 in this code.

8 And Dan said it to me perfectly the day
9 he came into my office. If you go down to Modern Auto
10 and you look at a Corvette, the speedometer goes up to
11 140 miles an hour. There's nowhere in the state of
12 Missouri you can drive a Corvette 140 miles an hour.
13 You can still buy it. You just have to agree to
14 comply with the laws that are on the books where the
15 speed limits are.

16 My folks, there's an affidavit that I'm
17 going to introduce into evidence as Exhibit 4. It's
18 attached to your affidavit from Deborah Baker, who
19 acknowledges this permit is only for 300 people. They
20 will only advertise this for less than 300 attendees.

21 So to say that there is -- so the legal
22 point for this Board to decide is there is nothing in
23 the Code in Section 237 that -- I'm sorry -- in 237
24 that ties the issuance of a special occasion permit to
25 the size of your building. They are not related at

1 all. It's not in here.

2 It may be what they want the Code to say,
3 but it's not what the Code does say. And as long as
4 the applicant, the appellant in this case, will limit
5 their events to less than 300 attendees, the size of
6 the building is irrelevant because you can also get a
7 special occasion permit if you already have an
8 existing building. There's nothing in here that says
9 it has to be for a new building. There's nothing in
10 here that ties it together at all.

11 So at this time, I would like to move and
12 offer into evidence Appellants Exhibit 4, which is the
13 affidavit of Deborah Baker and who acknowledges that
14 they can't have that.

15 (THEREUPON, EVIDENCE WAS MARKED
16 FOR IDENTIFICATION AND SUBMITTED FOR
17 THE RECORD AS APPELLANTS EXHIBIT 4.)

18 One of the documents in your packet that
19 I've marked a small version of as Exhibit 3 is a
20 layout of the building. It is showing tables of what
21 the configuration would be of the banquet center that
22 they're contemplating, and this is a table layout with
23 250 folks, plus another group of 18 at these tables.

24 That's kind of the planned layout, and
25 I'm going to let Dan come up here in just a little

1 bit, because he says, you know, here's the bar. Who
2 puts tables that close to the bar? Where's the dance
3 floor?

4 So to say that this building, this
5 building for fire marshal purposes, for engineering
6 purposes, the occupancy is over 500. Occupancy. But
7 that's not what 237 is all about. It's about
8 attendees, and they get to decide how many attendees
9 they want to have. And if they were to exceed 300 or
10 plan to exceed 300, then they have to come back before
11 this Board and at that time apply for a conditional
12 use permit.

13 They are not applying for a conditional
14 use permit. They've applied for the SOP permit, and
15 it's my contention, it's the appellants' contention
16 there is absolutely no discretion in that Code
17 section.

18 And so at this time, I know it's in your
19 packet, but I would also admit for the record
20 Appellants' Exhibit 2 which is the denial letter that
21 came from Scottie, and it clearly states in there they
22 are unable to grant the permit because the maximum
23 occupancy for the banquet space, indoor and outdoor
24 room, is 524. Based on this number, the event space
25 in question can exceed 300 people, and therefore,

1 requires a conditional use permit.

2 (THEREUPON, EVIDENCE WAS MARKED
3 FOR IDENTIFICATION AND SUBMITTED FOR
4 THE RECORD AS APPELLANT EXHIBITS
5 2 AND 3.)

6 We appeal from that finding because that
7 is not what 237 says. There is absolutely nothing in
8 237 that ties the occupancy of a building to a permit.
9 It's the planned attendees, and by their own affidavit
10 and their own statements, they would do that.

11 Again, enforcement of the issue should
12 not be we think something might happen. So therefore,
13 we're going to deny it. That's what the enforcement
14 mechanism is for.

15 So I would respectfully ask you all this
16 evening that you overturn the decision of the Planning
17 Director and issue the -- authorize the issuance of
18 the Special Occasion Permit.

19 My clients will sign whatever
20 documentation you want that they acknowledge under
21 oath they cannot have more than 300 attendees. They
22 will acknowledge that if they have more than 300
23 attendees, that they need to come back to the Planning
24 Department and file their application for a
25 conditional use permit for a special occasion, for

1 events where attendees will exceed 300.

2 So at this time, I defer to Mr. Baker.

3 CHAIRMAN UPCHURCH: Hold, Kurt.

4 Before we get to Mr. Baker, I have some questions for
5 you.

6 MR. VOSS: Okay. Yes, your
7 Honor.

8 CHAIRMAN UPCHURCH: As I
9 understand it, nothing has been constructed at this
10 moment in time, or does this building exist?

11 MR. VOSS: The building is
12 still -- I will defer to Dan, but I believe it is not.
13 It's still in the permitting stage because we're in
14 this. We can't do anything. We can't dance until we
15 get this issue resolved. We can't advertise anything.
16 So that's where the hold up is now.

17 CHAIRMAN UPCHURCH: Okay.

18 MR. VOSS: And I also want to
19 -- this is strictly for a banquet center. There's
20 nothing to do with the winery. This is strictly on
21 the issue of the banquet center. Yes.

22 CHAIRMAN UPCHURCH: My question
23 in regard to that, unless we have intents to do
24 exactly what's been stated is the concern, why would
25 be build a building that will house twice the number

1 of people that would be permitted under the
2 application?

3 Why would any business person undergo the
4 expense to build twice the area, nearly twice the
5 area, of what they're applying for?

6 MR. VOSS: I'll answer that
7 question very directly. It's not the Planning
8 Department's job to decide what my clients spend their
9 money on, and if my clients do decide in one year,
10 five years, ten years, or twenty years that they want
11 to have more than 300 attendees, they have to come
12 back and ask for that.

13 But there is nothing here that says we
14 get to decide that your building is too big, and we
15 don't like it. It's not in the Code. You can't --
16 they're interpreting something on the enforcement
17 mechanism, but that's not what we're here to do
18 tonight.

19 Their job is to follow the Unified Land
20 Use Regulations of Franklin County, and it says you
21 get a special occasion permit if you have less than
22 300 attendees. It doesn't say depending upon the size
23 of your building. It doesn't say anything about that.

24 It just says if you're going to have less
25 than 300. My point is what if I have a hay barn that

1 right now if I put a fire marshal out there would say
2 it would maybe hold 3,000 people and I want to have a
3 special event, but I want to limit it to 300.

4 If I tell you it's 300, and you're
5 denying it, you're basically calling me a liar when
6 I've done nothing wrong.

7 It's no different than buying the
8 Corvette and saying you can't buy a Corvette because
9 you might drive it faster than 55 miles an hour,
10 Gordon. That's the legal argument. There's nothing
11 in the Code that gives the Planning Director that
12 discretion to say I'm denying your permit because your
13 building has more people.

14 It's arbitrary, it's capricious, and
15 there's no discretion that gives you that right. In
16 the conditional use permit, there's all kinds of
17 discretion. That's what you just heard two hours of
18 testimony about, is the road narrow, is it wide
19 enough? That's discretion.

20 There's no discretion in 237. They might
21 want it to be in there, but it's not, and that's why
22 we have appealed that decision. I mean, it's been --
23 I wasn't involved in the initial proceedings of it,
24 but whenever you read the letter, that's all this case
25 is. If you'll read her letter denying it, she

1 occasions it specifically on the occupancy of the
2 building, not the number of attendees.

3 And the Code is driven strictly by
4 attendees. So they have every right to build a
5 building. I'm not here to say it's a smart move or a
6 dumb move. If it's successful, they might be back,
7 but then they've got to come back and deal with the
8 conditional use permit requirements.

9 But if it's less -- 300 or less
10 attendees, there's no discretion.

11 COMMISSIONER HEAD: Kurt, the
12 report in here check 237 is shortened.

13 MR. VOSS: I am sure you would
14 appreciate that after what you had before us tonight.

15 COMMISSIONER HEAD: Would you
16 agree with me, Kurt, that Chapter 237 also allows an
17 SOP for an outdoor event?

18 MR. VOSS: It does.

19 COMMISSIONER HEAD: And I guess
20 have you had any discussions with the County on how
21 big of an area or small of an area would be required
22 for an SOP if you're going to have an outdoor event?

23 MR. VOSS: I think the
24 requirements would be in the Code. I didn't zero in
25 on that, but I mean, if someone wanted to put up a

1 tent that had an occupancy for 2,000 people, but if
2 they're going to ask the same we're only going to have
3 300 people at the wedding venue, you know, we're going
4 to have it, you know, for the -- you know, I think
5 that's -- we're confusing occupancy with attendees.

6 The Code section says attendees.

7 COMMISSIONER HEAD: So you read
8 237 essentially if you pay the fee, hit the zoning,
9 comply, it's administerial act?

10 MR. VOSS: That's what I say.
11 There's no discretion in there.

12 COMMISSIONER HEAD: I don't
13 have any other questions.

14 CHAIRMAN UPCHURCH: Other
15 questions of this witness?

16 (NONE)

17 Other witnesses in support of the
18 application?

19 (THEREUPON, THE WITNESS WAS
20 SWORN.)

21 MR. DAN BAKER: Hi, Dan Baker.
22 I live at 3665 Sunny Road, the property in question.

23 A couple of things, and I think that Kurt
24 did a good job of hitting on them. The Code
25 specifically references attendees, and it's out

1 contention that occupancy is kind of an irrelevant
2 fact in that.

3 Occupancy, as you guys well know, is a
4 term that is used in an architectural and fire safety
5 term used to determine how many people can safely
6 evacuate a space in the event of an emergency.

7 An attendee is somebody who's been
8 invited to and is expected to attend an event. That's
9 it. Clearly two different terms.

10 One of the things that we took the
11 liberty of doing is including this in your packet. So
12 in order to show what a sample event might look like,
13 and I'd like, your Honor, to address your specific
14 question to Kurt here in just a moment. Why would
15 somebody build a building of this size to do this?

16 And this is really why. So our intended
17 use for this facility is to hold weddings, wedding
18 receptions, things like that.

19 The sample layout that you see here, this
20 is ten-foot table rounds in the main hall area with a
21 ten-person head table at the front. And as you can
22 see, this is fairly cramped space.

23 What we've additionally done is we put
24 high-tops in here to fit in an additional 18 people.
25 The total that you see in front of you is a 268 person

1 event.

2 So if I was to try to get 300 people in
3 here, and here's the thing. Could I stand 500 people
4 side-by-side in this building? Well, probably and the
5 building -- the safety of the building would work. So
6 they could evacuate that many people in the event of a
7 fire.

8 Could I sell a wedding to you or a
9 wedding reception to you and have you pay me to come
10 in here if you're standing shoulder-to-shoulder with
11 somebody? My intention is to have this -- to be a
12 comfortable space for the people who are here.

13 And another way to read that code says
14 that I am limited to 300 people, but I'm also allowed
15 to have up to 300 people in this. The simple fact is
16 if I were to build a building that could physically
17 only have a physical occupancy of 300 people, I could
18 not hold a 300-person wedding reception, wedding or
19 event in here.

20 You wouldn't pay me for that. Scottie
21 brought up earlier the mechanism that's used to
22 determine how many people can seat in an area, the A2
23 Code, 15 square feet per person. That comes out to
24 300 people. That would tell me I would be allowed to
25 build a building of 4,500 square feet.

1 If you live in a house that's 2,250
2 square feet on the main floor and you have a basement,
3 you could fit by that same number, 300 people, in your
4 house.

5 I don't think you could sell a wedding
6 reception in that space. So that's just doesn't make
7 a lot of sense.

8 So anyway, that's it for the most part.
9 If you have any questions, I'll be happy to field
10 them.

11 COMMISSIONER THATCHER: Dan, I
12 can't see the measurements on here. What does the
13 building measure? Just for my own edification.

14 MR. BAKER: The building
15 overall is 125 feet long or wide, whichever way you
16 want to look at that, by 100 feet wide. I think
17 that's marked on there.

18 COMMISSIONER HOFF: I notice
19 there's a stairwell in there. Has it got a basement?

20 MR. BAKER: No, sir, it has a
21 second floor over this portion where there is a bridal
22 suite and then a groom's ready room so that they can
23 get changed and do their whole thing.

24 This is all vaulted and open at the
25 ceiling.

1 COMMISSIONER HOFF: Okay.

2 MS. ZIELKE: Hey, Fred.

3 COMMISSIONER THATCHER: Yes.

4 MS. ZIELKE: The building plans
5 are in your packet also.

6 COMMISSIONER THATCHER: Oh,
7 well, I see this, but I can't read it.

8 MS. ZIELKE: Okay.

9 MR. BAKER: Forgive me if I'm
10 off by a foot or two there.

11 I'd also like to state for the record
12 too, we do understand the Special Occasion Permit
13 limits us to 300 attendees at our facility, and we
14 fully intend to comply with that. Our advertising
15 will reflect that, and I see nothing in the Code that
16 would prohibit us from obtaining that.

17 COMMISSIONER SCHRIEWER: I have
18 one question. I guess it's technical, probably more
19 along the fire guidelines. But I'm assuming these
20 spaces like these storage and these table things,
21 those are calculated in of people occupancy, right,
22 assuming those rooms could be full?

23 MR. BAKER: Yes, sir.

24 COMMISSIONER SCHRIEWER:
25 Obviously there's no intent to have those full,

1 correct?

2 MR. BAKER: That's correct.

3 And additionally -- well, sorry.

4 MS. ZIELKE: Derek, that number
5 is actually based on 15 square foot per person. So
6 there are different amounts that you can use to
7 calculate, and that 15 square foot is based on tables
8 and chairs.

9 So the number would actually be higher if
10 you used a smaller calculation like 5 square feet per
11 person.

12 COMMISSIONER SCHRIEWER: Well,
13 I get that. I'm just --

14 MS. ZIELKE: Okay.

15 COMMISSIONER SCHRIEWER: -- the
16 decor storage, the table/chair storage, that is
17 actually calculated as occupiable space, correct?

18 MR. BAKER: That's correct.

19 MS. ZIELKE: Correct. But when
20 we were calculating the amount that we were figuring
21 into the occupancy, we were only looking at the main
22 areas that are going to be used for the events.

23 COMMISSIONER SCHRIEWER: Okay.

24 CHAIRMAN UPCHURCH: Other
25 questions of this witness?

1 Has any of this been constructed?

2 MR. BAKER: No, sir, not at
3 this time.

4 CHAIRMAN UPCHURCH: All right.
5 So in terms of what is going to be built, none of that
6 has been determined at this moment in time. We have a
7 drawing that might be?

8 MR. BAKER: Yes, sir, at this
9 time, we have a very expensive drawing that is the
10 plan of what we'd like to do up here. Yes.

11 CHAIRMAN UPCHURCH: I mean,
12 I'll just ask the obvious question. Do you ever have
13 any intention of going over 300 and you're building
14 something that would house more people, why don't you
15 just do the conditional use permit?

16 MR. BAKER: It's not our
17 intention to exceed 300. As you can see by our
18 layout, I'm not sure how many more people we could fit
19 in here. This is a 268-person wedding. If I wanted
20 to stand people shoulder to shoulder, we could get
21 more people in there for sure. But if your son or
22 daughter is getting married and you want to pay me to
23 come here, you're expecting a safe and comfortable
24 place to do so, I see no problem at all with us
25 capping our event size at 300.

1 As a matter of fact, the average wedding
2 size in Missouri is 150. A large wedding is tipping
3 the scales around 300. So our intent has always been
4 to design our facility to be able to house comfortably
5 150-person wedding all the way up to a 300-person
6 wedding.

7 If we at some point in the future decide
8 we'd like to go above and beyond 300 people, we have
9 -- we understand fully that we'll have to come back
10 and apply for a conditional use permit, and we've got
11 no problem doing that if that's our desire in the
12 future. But at this time, it's not.

13 COMMISSIONER HOFF: One
14 question I have. When I'm looking at this banquet
15 area, your architect, I take it this is your drawing?
16 It says it's 452 occupancy.

17 MR. BAKER: That it could
18 physically be evacuated from this area in the event of
19 an emergency, not -- that's how the occupancy number
20 is calculated.

21 Again, I've got no intention of having
22 that number of attendees in that space. You wouldn't
23 pay me to come there if that were what I was trying to
24 do.

25 CHAIRMAN UPCHURCH: Other

1 questions of this witness?

2 (NONE)

3 Thank you.

4 MR. BAKER: Thank you.

5 CHAIRMAN UPCHURCH: Other
6 speakers on behalf of the appeal?

7 Sign in and be sworn.

8 (THEREUPON, THE WITNESS WAS
9 SWORN.)

10 MR. DARRELL BARRETT: My name's
11 Darrell Barrett. Yeah, Jim is my brother.

12 I want to take a minute. You guys got a
13 no-win job. And however you rule this, I appreciate
14 your business.

15 CHAIRMAN UPCHURCH: It's the
16 excellent pay that brings us back.

17 MR. D. BARRETT: Basically I
18 don't know how -- when the opposition speaks, I don't
19 know how far we're going to get into this, and I don't
20 know how much I can say. So I'm sure you'll stop me,
21 Gordon, if I say something I wasn't supposed.

22 But I've been hearing in talking the
23 neighborhood about this venue coming in, and been
24 hearing it was the bogeyman and all this. So I just
25 said, the heck with this. I'm going to go find out.

1 So I went and knocked on their door, and basically
2 they told me the same things Kurt told you. Only he
3 did in a fancy way.

4 And alls I'm saying these people, they
5 know that they can't have more than 300 people. If
6 they do, they're going to go to jail. You know, so I
7 see this as -- you know, they give measures of
8 property values and then you hear all this and that.
9 I'm within a half a mile from this place, and Fred
10 knows where I'm at.

11 I don't think it's going to hurt my
12 property value. Quite honestly, you know, it's going
13 to provide a tax base for the County. It's going to
14 provide jobs. Granted they're probably not going to
15 be jobs you want to retire from, but it'll generate
16 some revenue.

17 So basically that's all I got to say for
18 it.

19 CHAIRMAN UPCHURCH: Hold on.
20 Any questions of Mr. Barrett?

21 (NONE)

22 Thank you.

23 Anyone else to speak on behalf of the
24 appeal?

25 (THEREUPON, THE WITNESS WAS

1 SWORN.)

2 MR. STEVE LUCAS: My name is
3 Steve Lucas. I own property and a residence that's
4 immediate to this Debbie Baker-Oliver property. I own
5 property to the east and I own property to the south.

6 I've also had personal business dealings
7 with the Oliver family. I've found them to be ethical
8 and aboveboard.

9 I've also importantly found them to be
10 truthful and amenable to suggestions that I made or my
11 wife made regarding the construction of this building.

12 My history is construction work ever
13 since I was young before I retired. So the only
14 reason I'm really here tonight is to tell you as far
15 as dealing with people that are -- I believe to be
16 honest and forthright is this group of people.

17 And thank you for your time and my time
18 for allowing me to be here. Thank you.

19 CHAIRMAN UPCHURCH: Questions
20 of this witness?

21 (NONE)

22 Thank you.

23 MR. LUCAS: You're welcome.

24 CHAIRMAN UPCHURCH: Anyone else
25 to speak on behalf of the application of the appeal?

1 (NONE)

2 Seeing none. Anyone to speak in
3 opposition to the application of this appeal?

4 Step forward, sign in and be sworn.

5 MR. LLOYD KLEINDENST (PH.): A
6 question. Will there be a chance to say something
7 neither for nor against, but just in general to the
8 case?

9 CHAIRMAN UPCHURCH: You can
10 speak for or against and now's the time to do it. We
11 don't chat. So anyone to --

12 MR. KLEINDENST (PH.): It's got
13 to be either or. I guess this will be it.

14 (THEREUPON, THE WITNESS WAS
15 SWORN.)

16 CHAIRMAN UPCHURCH: Your name
17 for the record.

18 MR. KLEINDENST (PH.): Lloyd
19 Kleindenst (ph.). My concern is the results of the
20 Commissioners of, to the best of my understanding,
21 voting against the Planning and Zoning Commission's
22 non-recommendation of this planning and zoning zones.
23 Because in both the previous case you just considered
24 tonight and this one, adjustments are being made to
25 previously Non-Urban Rural areas.

1 And the W designation has opened what has
2 been residential and rural areas to 40 plus uses of
3 commercial or industrial enterprises, and that's the
4 concern I think of Franklin County citizens in terms
5 of the quality of life and sometimes the safety, the
6 security. But for the most part, the quality of life
7 that was chosen when people moved out to Franklin
8 County.

9 Thank you.

10 CHAIRMAN UPCHURCH: Thank you.

11 Questions?

12 (NONE)

13 Thank you.

14 MR. KLEINDENST (PH.): Thank
15 you.

16 CHAIRMAN UPCHURCH: Again,
17 people to be heard in opposition to the application
18 step forward, sign in and be sworn.

19 (THEREUPON, THE WITNESS WAS
20 SWORN.)

21 MR. MICHAEL HERRMANN: My name
22 is Michael Herrmann, attorney for Judith and Steve
23 Carroll. Their address is right across the street
24 from this proposed development. They're at 3690 Sunny
25 Road.

1 And I know we've talked a lot about these
2 operational limitations, and I think it's been pretty
3 well covered that the appellants' proposition is that
4 this is just 300 attendees. However, looking at the
5 Building Code or the building occupancy here 550 is
6 what we really need to worried about because there
7 really -- we haven't really heard of any way that, you
8 know, this will be stopped from reaching past 300.

9 Likewise, the special occasion permit
10 purpose 82 -- 237(A)(2) is protecting nearby property
11 owners, residences and businesses from the special
12 occasions that may be disruptive, unsafe or
13 inappropriate given site conditions, traffic patterns,
14 land use characteristics and the nature of the
15 proposed use.

16 I say that because mimicking some of the
17 prior testimony from the previous appeal that, you
18 know, my clients I know came out here for a purpose of
19 tranquility and ruralness. And this W -- the zoning
20 district W is for agriculture and small-scale
21 commercial business uses.

22 What my clients are highly concerned
23 about is the literal foot traffic that's now going to
24 come with these big events. And with that, they are
25 worried about their own safety and as well as these

1 traffic uses. And I think that in order to have this
2 special occasion permit granted, you have to really
3 take into account all of those.

4 And which I believe that this Special
5 Occasional Permit should be denied or the appeal
6 should be denied as well, and that this should be open
7 for more -- it should be open for a public hearing
8 based on the conditional use permit to further flesh
9 out more of these issues.

10 CHAIRMAN UPCHURCH: Any
11 questions of this witness?

12 COMMISSIONER HEAD: I feel like
13 we're kind of the catcher's mitt people disliking what
14 their own legislators have already said that they can
15 do. I guess that being the case, where do you see
16 discretion for us in Chapter 237?

17 MR. HERRMANN: I see it -- from
18 what I cited to the 237(A)(2).

19 COMMISSIONER HEAD: But that's
20 describing the purpose of why the County adopted the
21 safeguards in 237, right?

22 MR. HERRMANN: Yes.

23 COMMISSIONER HEAD: Would you
24 also agree in the event of some sort of disaster, is
25 it easier to get 300 people out of a building that can

1 hold 500 than it would be to get 300 people out of a
2 building that can hold 300? I mean, if the point is
3 safety.

4 I guess to put it another way if the
5 engineer is saying that the occupancy of a building is
6 300 exactly, I guess what prevents them from bringing
7 in 305 now?

8 MR. HERRMANN: If you want to
9 state -- yeah, restate it. Sorry, restate that.

10 COMMISSIONER HEAD: Well, if
11 the sole issues is enforceability, I guess just
12 because we say a building in Franklin County can only
13 house 300, it doesn't mean that more than 300 people
14 can go into that structure. Right?

15 MR. HERRMANN: Right.

16 COMMISSIONER HEAD: I don't
17 have any other questions.

18 CHAIRMAN UPCHURCH: Other
19 questions of this witness?

20 (NONE)

21 Thank you.

22 MR. HERRMANN: Thank you.

23 CHAIRMAN UPCHURCH: Other
24 speakers in opposition to the application appealing
25 the zoning decision?

1 (NONE)

2 Seeing none, I'm going to permit one
3 rebuttal witness.

4 MR. VOSS: Mine will be very
5 brief, your Honor.

6 First, this application was filed almost
7 11 months ago. This has nothing to do with the
8 Commissioners' rezoning in January. It wasn't like
9 something was done to take advantage of a W versus an
10 ANU. So I don't want to be sucked into that all.

11 CHAIRMAN UPCHURCH: I didn't
12 make that connection either.

13 MR. VOSS: But I just want to
14 make sure.

15 And number two, the attendees as this
16 event is drawn is 268. The occupancy for this is over
17 500. The point we have been making is just because a
18 building has the ability to have 500 people in it to
19 make the fire marshal happy or the architect happy, is
20 a totally different concept than attendees.

21 We know it's 300. We'll sign whatever
22 you want, and if it comes down to enforcement, I put
23 -- and it's in your packet as Exhibit D to the brief.
24 You know, if they receive a complaint, they can go
25 investigate it.

1 If we violate it, it's a Class A
2 misdemeanor. Gordon knows what the penalties are for
3 a Class A misdemeanor. And it's also appropriate to
4 have an injunction.

5 If we're violating this, they can file
6 the action to revoke the permit.

7 These people, they've said what they're
8 going to do. They're telling you it's 300. They'll
9 sign whatever you want. Come check whenever you want,
10 but there's nothing in the Code that ties this to any
11 conditions, any conditional use permit. It doesn't
12 tie it to the size of a building. It's strictly if
13 you're going to have less than 300 attendees, which
14 they've said they're going to do, they get the SOP
15 permit if they meet all the other requirements.

16 And the only thing we're appealing -- if
17 you'll look at the letter on Exhibit A from the
18 Planning Director, the only reason that permit was not
19 given was tied to the size of your building. Nothing
20 else. Everything else has been satisfied. That was
21 the only issue, and if we overcome that issue that it
22 has nothing to do with occupancy, then this permit
23 needs to be granted.

24 I would ask you to reverse the decision
25 and grant the SOP.

1 Thank you.

2 CHAIRMAN UPCHURCH: Kurt, don't
3 take off.

4 I still struggle with the fact that
5 clearly from the record that's been made to us, the
6 building is large enough to support the CUP, and I
7 guess as drawn and it doesn't exist yet. It would
8 support that application.

9 So I'm --

10 MR. VOSS: I disagree with you.
11 You're tying the occupancy of a fire marshal versus an
12 attendance number.

13 This building right here has an occupancy
14 as drawn of over 500 people. That's how many the fire
15 marshals say you can put in there, but that's not what
16 they're going to do.

17 And to a point that Dan made was, if you
18 want me to draw this so the fire marshal says I can
19 only fit 300 occupants, you're going to draw the line
20 over here, and you can't get 300 attendees in a
21 building that has an occupancy of 300.

22 They want to talk about occupancy.
23 That's not what 3 -- 237 says. It's strictly
24 attendees, and as long as they're less than 300
25 attendees, it doesn't matter if that building -- if

1 they want to build a building that will hold 2,000
2 people. They can do that as long as they don't have
3 more than 300 attendees.

4 So I mean, that's my point I made in the
5 brief. If they want to build -- if somebody wanted to
6 take a hay barn that they had and turn it into an SOP,
7 a hay barn that might have an occupancy of two or
8 three thousand, you can still do it with an SOP.

9 The size of the building is not mentioned
10 anywhere in 237. It's not. I've read the Code.

11 So to answer your question, I don't think
12 the size of the building matters one iota. It's the
13 number of attendees. That's the only thing in 237.

14 CHAIRMAN UPCHURCH: I guess I
15 just struggle with we certainly have had people over
16 the years that have built a myriad of things in
17 violation of the order and then come back with either
18 a conditional use or a variance after it's built.

19 They've had -- twice burned I guess is
20 the --

21 MR. VOSS: Well, that could be.
22 I agree with that. They can come back. The Code says
23 if you're going to have more than 300 at any point in
24 time, come back and file a conditional use permit.

25 I'll even tell you they tried to file for

1 a conditional use permit, and Mark wouldn't let them.

2 And so -- but they don't want to do that.

3 In their discussions, this has been going on for some
4 time. We are proceeding forward. My client is
5 proceeding forward limiting to 300. They've given you
6 an affidavit to say that. They'll sign whatever you
7 want, and the enforcement mechanism is here.

8 If they receive a complaint, if Mr.
9 Barrett complains that there's 310 people out there,
10 he can file a complaint. They can go out and check
11 and count the people that are there.

12 They know that's an issue. They've been
13 schooled by me. They understand that they cannot have
14 that.

15 This is only the third SOP permit that
16 we've had, as I understand it.

17 MS. EAGAN: (Shaking head no.)

18 MR. VOSS: I thought in the
19 e-mails in the packet it only said there had only been
20 -- there have only been two other SOP permits.

21 MS. EAGAN: That have been
22 approved.

23 MR. VOSS: That have been
24 approved, yeah. But --

25 MS. EAGAN: We've had other

1 applications.

2 MR. VOSS: But this one is
3 strictly the only issue left is the occupancy, and it
4 has nothing to do with the attendees. 237 is solely
5 on the number of attendees, and I submit to you,
6 Gordon, if they wanted to, they could have a building
7 three times that size as long as they look you in the
8 eye and tell you it's going to be 300, I think it has
9 to be granted.

10 And if they violate that, that's what
11 Article 5 is for. Go out and take them down. Get the
12 injunction. Revoke their permit.

13 CHAIRMAN UPCHURCH: And we both
14 know that's impossible to go out and count those
15 people. That's less than genuine.

16 MR. VOSS: But I disagree with
17 that because you're basically calling my folks out and
18 saying that you're already assuming they're going to
19 violate a law. It's not different than buying the
20 Corvette. It's got a speedometer that goes up to that.
21 Should I not sell it to you because you might drive it
22 over 60 miles an hour? It's the same thing.

23 CHAIRMAN UPCHURCH: We're
24 talking apples and oranges with cars that are mass
25 produced and buildings that we're putting out that

1 we're building that will seat 500 people, but we don't
2 make that application.

3 MR. VOSS: I disagree. The
4 building will -- there's a difference between seating
5 500 and --

6 CHAIRMAN UPCHURCH: I've heard
7 your argument.

8 MR. VOSS: All right. Any
9 other questions?

10 COMMISSIONER THATCHER: Kurt, I
11 have a question for you.

12 MR. VOSS: Yeah.

13 COMMISSIONER THATCHER: What
14 scares you about the CUP?

15 MR. VOSS: I saw tonight. I
16 mean, first of all they're not doing it. So they're
17 not in that arena. But anytime, you know, as a
18 lawyer, when you've got the guarantee, you take the
19 guarantee.

20 There is nothing that you have to give
21 the SOP if you meet the requirements. You move into
22 the conditional use permit requirement, and the
23 discretion just comes exploding out. You can put
24 times, you can put numbers, you can put days, you can
25 put all of that on there, and that's the way they've

1 written it. Because when you're dealing with larger
2 numbers of people, there may be different issues that
3 need to be dealt with as far as safety and hours.

4 But if you're limiting it to less than
5 300, as someone said earlier, the City that --
6 whenever this was adopted, that was the magical
7 number. If you're less than 300, do it. If you're
8 over 300, we reserve the right to put conditions on
9 it.

10 It's the fear of the unknown. That's
11 what I would tell them. I mean...

12 COMMISSIONER THATCHER: So
13 correct me if I'm wrong. So if you have 300 or under,
14 you can be open all hours of the night?

15 MR. VOSS: No. No, the Code --
16 it's very -- it's very specific in here in 237 as the
17 hours you can be there, the different hours on Friday
18 and Saturday versus Monday through Thursday and on
19 Sunday. So there's hour limits. There's noise
20 limits. Those are all in the Code in 237 if you read
21 that.

22 So the hours are preset on the SOP, but I
23 guess you could have an argument that if it was under
24 a conditional use permit, someone could even limit
25 those hours. But that would be the concern. There's

1 so much discretion when you move into that.

2 COMMISSIONER HOFF: Kurt, I'm
3 sitting here looking at this plan. How much -- how
4 many parking spaces is here for cars?

5 MR. VOSS: I'm not qualified to
6 answer that question.

7 Mr. Chairman, can I defer -- you said
8 one, but I'm not the one to answer that.

9 CHAIRMAN UPCHURCH: It's been
10 like herding cats tonight. It's not even 10 o'clock,
11 so -- and frankly I just as soon someone speak to it
12 because there are drawings that would tell us that.

13 MR. VOSS: I can't answer that,
14 but Dan can.

15 MR. BAKER: Sure. Do you mind
16 if I look up the exact number here on our building
17 plan?

18 CHAIRMAN UPCHURCH: Sure.

19 MR. BAKER: Thank you.

20 MS. EAGAN: I mean, I can also
21 tell you it exceeds our parking requirements. That's
22 not an issue.

23 MR. BAKER: Parking -- let me
24 give you the exact number. I think --

25 COMMISSIONER HOFF: Well,

1 Scottie, what I was trying to come up with is it
2 exceeds our parking requirements, but for how many
3 people.

4 MS. EAGAN: Oh, I got you.

5 COMMISSIONER HOFF: For the 300
6 or is it for 500 people is what I'm trying to figure
7 out because that makes a big difference. If you can't
8 park them, how they going to fill the building?

9 MR. BAKER: That's a great
10 point. I'm going to try pull up our site plan here,
11 and I apologize for the delay.

12 COMMISSIONER HOFF: With what
13 I'm seeing, there's no room to expand unless he goes
14 back over to the -- across the lake or out to the barn
15 and the house for parking, except for right here
16 around the building, and the vineyard.

17 COMMISSIONER SCHRIEWER: Permit
18 check list showed 167 parking spaces.

19 MR. BAKER: A hundred and
20 sixty-seven parking spaces for the events based up
21 top?

22 COMMISSIONER SCHRIEWER: I
23 believe based on my interpretation of the application.

24 MR. BAKER: I believe that's
25 correct. Let me verify. The site plan has gone

1 through multiple revisions to try to move it back off
2 of the property line to comply with the Special
3 Occasion Permit. I apologize this is taking me a
4 moment.

5 Okay. Parking -- standard parking spaces
6 of the event center area, I believe this is our most
7 recent -- yes, it is. Total parking spaces for the
8 event center is 120 spaces. We have 14 standard
9 spaces, and then 6 handicapped accessible spaces
10 there.

11 COMMISSIONER SCHRIEWER: So you
12 said 125, correct?

13 MR. BAKER: One -- 120 -- 120
14 total vehicular parking spaces for the event center,
15 and then that's broken down to 114 standard and 16
16 ADA.

17 MR. VOSS: I just -- the
18 parking, I mean, is already -- it's been approved.
19 The only issue was this -- whether there was the
20 occupancy. Did that answer your question?

21 COMMISSIONER HOFF: Kurt, yeah,
22 it did answer my question, but I don't know if this is
23 on or off.

24 But anyway, it did answer my question.
25 What I was trying to figure out is how many people you

1 can park there. How many cars you can park there with
2 the average number of people being there, how will it
3 fill that building?

4 You know, and the question is was to
5 answer your question that they want to keep it at that
6 300.

7 MR. VOSS: It supports my
8 argument is what I'm --

9 COMMISSIONER HOFF: And that's
10 what I was digging for.

11 MR. VOSS: Yeah, I think it
12 does, I mean, if you've got the parking. I understand
13 people can park in the grass. I mean, people can park
14 there.

15 MS. ZIELKE: I just wanted to
16 make you aware that that parking number is based on so
17 we require one parking space for every four people.
18 So with that many parking spaces, you could
19 accommodate up to 480 people.

20 COMMISSIONER HOFF: Yeah, but i
21 also figured a little bit differently with it backed
22 up. You've got employees that's going to drive one
23 per car. There's not going to be four of your
24 employees coming in a car.

25 An average number is going to be three,

1 even though a car can hold four.

2 MS. ZIELKE: Well, it's based
3 on occupancy, and so there's also going to be areas
4 that the employees can have access to that we're not
5 actually including in the amount that we are requiring
6 for parking.

7 So if you were to consider the entire
8 building, including the second floor, then you might
9 end up with more -- more square footage that even
10 still.

11 MR. VOSS: I wanted to address
12 this one to Fred.

13 Another issue is when you're in the
14 wedding business, people are booking now for next
15 year. That's the urgency, and we appreciate your
16 consideration this evening. If you throw us into the
17 conditional use permit, you know, we're down the road,
18 where basically you might -- you're probably ruling
19 out weddings for a lot of next year because people are
20 making decisions now for where they're going to get.

21 And we're not advertising. We -- you
22 know, we need this -- they need this permit, and so
23 that's kind of where we are to start not for this
24 year, but for the 2021 year. So...

25 I know it's been a long night. Are there

1 any other questions I can answer for this group?

2 CHAIRMAN UPCHURCH: Thank you.

3 MR. VOSS: I thank you very
4 much for your consideration.

5 CHAIRMAN UPCHURCH: Discussion
6 on the Board?

7 COMMISSIONER THATCHER: What is
8 the difference between 300 people and 500 people,
9 other than traffic? Is it noisier?

10 CHAIRMAN UPCHURCH: Probably.

11 COMMISSIONER THATCHER:
12 Probably.

13 CHAIRMAN UPCHURCH: And if we
14 don't -- if we don't do exactly what our Zoning
15 Department has done, it's impossible to police --

16 COMMISSIONER THATCHER: I
17 agree.

18 CHAIRMAN UPCHURCH: -- how many
19 people are in there. And I just struggle with the
20 fact from the packet that I got and reviewed there's
21 been significant dialogue long term in terms of the
22 options and if there was a desire to have larger
23 groups to go with the conditional use permit, but that
24 was never pursued.

25 And yet, openly today they indicate well

1 we know we can do that, and I've been on the Board
2 long enough to be burned with people who built or did
3 with little or no approval and then shortly thereafter
4 went back. Well, we had to build, so now we're
5 entitled. So I'm just a little...

6 Justin?

7 COMMISSIONER HEAD: I feel
8 sorry for the staff. You guys have been kind of
9 thrown in the middle of this between Mark and the
10 Commission.

11 CHAIRMAN UPCHURCH: And I guess
12 with Mark, and we feel for you.

13 COMMISSIONER HEAD: But I think
14 the reading of that Code section it doesn't matter the
15 square footage of the building, it doesn't matter the
16 parking spaces, it doesn't matter the interior colors
17 or the exterior colors.

18 It's not the applicant's problem if the
19 County wrote a right in Chapter 237 that it feels like
20 it can't enforce. The fact is it can enforce it. The
21 County does it every day. Whether they choose to do
22 it or not to do it, doesn't make any difference for a
23 clear reading of what is required by that Code
24 section.

25 Which has been met without disapproval.

1 building a building, I don't understand.

2 COMMISSIONER SCHRIEWER: I
3 guess I have kind of a question. So do we have to
4 follow the same format on this scenario that we're in
5 where we're basically having an appeal on a staff
6 decision? Is it the same voting process as if we were
7 overturning a P & Z meeting decision?

8 MS. ZIELKE: Yes, it is.

9 COMMISSIONER SCHRIEWER: Just
10 double checking. Thank you.

11 CHAIRMAN UPCHURCH: Is there
12 further discussion?

13 COMMISSIONER HOFF: Well, I
14 think do -- one of the things -- I think one of the
15 things I got to look at is safety. Has it been met.
16 There's more than adequate enough safety here for 300
17 people.

18 The road's good. The area is good.
19 Marking is good. I can't deny on that, but when I'm
20 sitting here and looking at our County guidelines, I
21 don't have a leg to stand on to support the denial.

22 And that's what I'm going to go by, is
23 what's written by our County and what's been approved.

24 CHAIRMAN UPCHURCH: Further
25 discussion?

1 (NONE)

2 I'd entertain a motion.

3 MS. ZIELKE: Mr. Chairman, may I
4 say something before the a motion is made?

5 CHAIRMAN UPCHURCH: Please.

6 MS. ZIELKE: I would need some
7 sort of clarification for our office because at this
8 point, that was not the only outstanding issue. They
9 still had not submitted engineered drawings for the
10 file that are required.

11 So if it's the Board's intention to only
12 overturn Scottie's decision to deny it based on the
13 building occupancy --

14 CHAIRMAN UPCHURCH: I think
15 that's the only thing that is before us.

16 MS. ZIELKE: Okay.

17 CHAIRMAN UPCHURCH: For us to
18 usurp other authority and conditions, et cetera would
19 be beyond what is before us, and no, it's not a
20 conditional use permit.

21 I believe what's before us tonight is
22 this singular issue of the administrative denial.

23 MS. ZIELKE: Okay. I just
24 wanted to make sure the motion was --

25 CHAIRMAN UPCHURCH: No, I think

1 that's appropriate so that we -- before we move
2 forward because again condition uses which permit
3 conditions really are our bread and butter, and this
4 isn't what that is.

5 But thank you for bringing that up.

6 Other discussion then?

7 COMMISSIONER SCHRIEWER: Yeah,
8 I do have a question on that. So I guess there's two
9 perspectives. One was that everything was completed
10 and this is ready to go, and we're just hearing that
11 maybe it wasn't.

12 I had a question about the -- and again
13 I'm kind of under the assumption this was all taken
14 care of, but I do want to ask. There is a requirement
15 for an access permit for the commercial entrance.

16 Was that actually applied for and given?

17 MS. ZIELKE: Yes.

18 COMMISSIONER SCHRIEWER: So
19 what are the things that you are saying are missing
20 from it?

21 MS. ZIELKE: The engineered
22 drawing was something that was discussed at the same
23 time as the building occupancy, and we were told that
24 they would be bringing us revised engineered drawings.
25 But we still have not received anything. And so I

1 just wanted to know if the Board intended to, you
2 know, require approval of it without those engineered
3 drawings.

4 CHAIRMAN UPCHURCH: Is there
5 further discussion among the Board?

6 (NONE)

7 I'd entertain a motion.

8 COMMISSIONER SCHRIEWER: I
9 suppose I would move to uphold the appeal and approve
10 the SOP as presented.

11 COMMISSIONER THATCHER: I'll
12 second it.

13 COMMISSIONER SCHRIEWER: I'm
14 not overly happy with my wording of it, but you get
15 the intent.

16 CHAIRMAN UPCHURCH: We have a
17 motion and a second I believe to affirm the appeal as
18 to the SOP only and a second.

19 The Board is not taking any action on any
20 other conditions that would be required, even on the
21 SOP, on the motion that is before us.

22 COMMISSIONER HEAD: So just so
23 we're all on the same page, if we vote for it, we're
24 only overturning the denial based upon the --

25 CHAIRMAN UPCHURCH: And whose

1 denial was it? Is it Scottie's or is it Nichole's or
2 have you guys bad-mitteded this thing back and forth
3 or what's --

4 MS. ZIELKE: So I started
5 reviewing the file originally, and then at one point,
6 whenever they were arguing several of the points, I
7 just --

8 CHAIRMAN UPCHURCH: You decided
9 that was above your pay grade?

10 MS. ZIELKE: Right. So then
11 Scottie is the one that denied the permit for that
12 reason.

13 CHAIRMAN UPCHURCH: Okay.
14 Kurt, your belief that it's Scottie's
15 denial?

16 MR. VOSS: I think it's
17 Scottie's denial, but I don't think you can come back
18 and piecemeal. We got what the denial was, and the
19 denial was one letter.

20 You don't get to keep well, now we're
21 going to deny it tomorrow. We're going to be back
22 here in two months and three months and four months.

23 Her letter said it was denied because of
24 the occupancy of the building. It didn't say
25 occupancy of the building and other things.

1 We're still going to get a Building
2 Permit. I mean, we're not here to say they're not
3 going to do that. I mean, they're going to do those
4 things, but what I don't want to be in a situation of
5 is okay, now I get another letter tomorrow that says
6 oh, by the way, you didn't do this. Or by the way,
7 we're going to deny the permit because of this.

8 This -- they denied. That's what this
9 Board is for. So I think the motion should be -- or I
10 would hope this Board would overrule her determination
11 and grant the SOP. Take the discretion out of it.
12 That's what I think it should be.

13 COMMISSIONER SCHRIEWER: I
14 believe that was my motion.

15 MS. EAGAN: Can I state
16 something. It was stated at the last meeting with the
17 applicant that they would be giving engineered
18 drawings, which they haven't. That's why there were
19 not addressed in the letter.

20 So for them to say that everything was
21 fine, that's not true.

22 COMMISSIONER SCHRIEWER: Is
23 that a requirement of P & Z?

24 MS. EAGAN: It is. It's a part
25 of Section 237.

1 CHAIRMAN UPCHURCH: So if an
2 SOP was approved, that would always be the next step?
3 Am I hearing you say that?

4 MS. EAGAN: It's always a part
5 of their site plan. So the site plan drawn by an
6 engineer has to be included as part of the
7 application.

8 CHAIRMAN UPCHURCH: Derek, do
9 you want to amend your motion, or do you want to stand
10 on your motion?

11 COMMISSIONER SCHRIEWER: I
12 will --

13 MR. VOSS: We agreed to provide
14 an engineering drawing. That's not an issue. And
15 we'll go on record if you want that on the record.

16 CHAIRMAN UPCHURCH: I think
17 you're on the record right now. So...

18 Derek, do you want to stand on your
19 motion?

20 COMMISSIONER SCHRIEWER: I will
21 -- I would like to make sure that they obviously
22 follow through with what is noted in this section. Do
23 we feel I need to add things to that to clarify that?

24 I believe that's something that you still
25 have to do what's necessary to grant this. So I don't

1 think I need to adjust anything. I'd be happy with my
2 motion as it sits.

3 CHAIRMAN UPCHURCH: Do I still
4 have the second on that?

5 COMMISSIONER THATCHER: Yes,
6 sir.

7 CHAIRMAN UPCHURCH: Okay.

8 We have a motion and a second. We have
9 an expectation with that motion that there will still
10 be some engineered site drawings required by the
11 regulations, even with the motion as stated.

12 Anybody wants to quarrel with that
13 designation, let me know now.

14 (NONE)

15 I see no hands. I guess we need a call
16 of votes on the motion and the second.

17 MS. ZIELKE: Steve Hoff?

18 COMMISSIONER HOFF: Yes or no.
19 Your for or favor?

20 MS. ZIELKE: His motion was to
21 support the appeal that you would overturn Scottie's
22 decision with a yes vote.

23 COMMISSIONER HOFF: Yes.

24 MS. ZIELKE: Derek?

25 COMMISSIONER SCHRIEWER: Yes.

1 MS. ZIELKE: Fred?

2 COMMISSIONER THATCHER: Yes.

3 MS. ZIELKE: Justin?

4 COMMISSIONER HEAD: Yes.

5 MS. ZIELKE: And, Gordon?

6 CHAIRMAN UPCHURCH: No for the
7 reasons that I've stated throughout the hearing.

8 MS. ZIELKE: With four in
9 approval, the appeal has been approved, and Scottie's
10 decision has been reversed.

11 CHAIRMAN UPCHURCH: I believe
12 that concludes the hearing. We may have some
13 housekeeping. There's nothing more that we will do on
14 this matter this evening.

15 We appreciate you all being civil as
16 everyone was earlier, and thank you for your
17 attendance this evening.

18 Scottie, I didn't take any particular
19 notes. What more do we have to do that I'm rusty on
20 this?

21 MS. EAGAN: Nothing.

22 CHAIRMAN UPCHURCH: Then I'm
23 going to move that we adjourn. Is there a second?

24 COMMISSIONER THATCHER: Second.

25 CHAIRMAN UPCHURCH: In favor

1 aye.

2 COMMISSIONER THATCHER: Aye.

3 COMMISSIONER HEAD: Aye.

4 COMMISSIONER SCHRIEWER: Aye.

5 COMMISSIONER HOFF: Aye.

6 CHAIRMAN UPCHURCH: We are

7 adjourned.

8 (THEREUPON, THE PROCEEDINGS

9 CONCLUDED AT 10:22 P.M.)

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1 CERTIFICATE OF REPORTER
2 I, PATSY A. MAYBERRY, Professional Court
3 Reporter and Notary Public within and for the State of
4 Missouri, before whom the foregoing proceeding was
5 taken, do hereby swear that: the aforementioned was
6 held at the time and in the place previously
7 described; the proceedings were taken down in
8 stenographic notes by me and transcribed by me, or
9 under my supervision, to the best of my ability; and
10 that the aforementioned represents a true and accurate
11 transcript of said proceedings.

12 IN WITNESS WHEREOF, I have hereunto s
13 my hand.

Patsy A. Mayberry



14 _____
15 Patsy A. Mayberry, Court Reporter
16 Notary Public, State of Missouri

17 My Commission Expires:
18 August 26, 2022
19
20
21
22
23
24
25

PUBLIC HEARING 2/25/2020

A	acknowledge	90:18	afoot 83:19	130:10
A' 22:15	115:20,22	adjourn 160:23	aforemention...	amend 106:20
a.m 25:19 106:7	acknowledges	adjourned 161:7	162:5,10	158:9
A2 105:17	112:19 113:13	ADJOURNME...	afraid 55:22	amount 25:5
122:22	acknowledging	2:23	agenda 9:13	32:21 125:20
abandoned	87:11	adjust 159:1	98:13 99:11	148:5
66:12	acre 34:10	Adjustment 1:8	109:5	amounts 125:6
ability 14:1 93:1	acres 10:25 11:1	5:2 6:6 8:25	ago 48:10,17	analogy 36:3
136:18 162:9	55:5 101:11	9:12 10:3,6	49:3 55:15	41:11
able 33:13,13	act 120:9 151:7	13:25 98:22	56:20 66:8	analysis 30:8,19
61:25 62:11	action 108:21	99:10 100:1,5	75:18 136:7	33:5,6 35:8
86:24 103:19	137:6 155:19	108:23	agree 47:23	41:20
127:4	activity 87:22	adjustments	94:15 108:23	and/or 104:10
aboveboard	actual 18:6 19:17	131:24	112:13 119:16	anecdote 75:6
130:8	25:23 26:4	administerial	134:24 139:22	announce 10:10
absolutely 76:8	34:22 103:12	120:9 151:6	149:17	announcing
114:16 115:7	151:9	administrative	agreed 105:20	7:13
accept 106:25	ADA 146:16	153:22	158:13	answer 6:23
acceptable	add 7:7 28:3,19	administrator	Agricultural	37:2 40:10
24:6	36:14 70:5	14:10 30:4	10:20 11:3,8	41:19,19 42:10
access 11:15	85:21 158:23	31:24 79:25	agriculture	43:20 59:3
12:3 26:18,18	addendum 14:7	80:10 106:9	133:20	60:9 117:6
26:21 27:3	addition 6:21	admit 56:19	ahead 100:14	139:11 144:6,8
30:9,15 101:19	19:2 28:22	114:19	aid 29:2	144:13 146:20
148:4 154:15	33:19 40:16	adopted 12:2,6	ain't 54:22 55:5	146:22,24
accessed	78:8	12:16 21:11	air 28:22	147:5 149:1
76:20	additional 18:13	134:20 143:6	Alaris 1:20 5:13	answered 92:16
accesses 79:8	80:16 121:24	adrenaline	alienate 66:6	anticipate 32:14
accessibility	additionally	66:24	allocated 53:8	32:19 34:7,14
76:10	121:23 125:3	advantage	allow 33:10 89:1	ANU 136:10
accessible 23:8	address 9:13,22	136:9	101:12	anybody 47:23
146:9	30:10 45:17	advantageous	allowed 86:7	159:12
accident 26:25	84:5 86:5	85:1	107:23 122:14	anybody's 68:5
26:25 65:5,6	87:8,24 95:2	advertise	122:24	anytime 111:23
70:11,11 71:1,1	99:11,20	112:20 116:15	allowing 11:20	142:17
accidents 44:14	121:13 132:23	advertising	130:18	anyway 49:5
68:16	148:11	124:14 148:21	allows 119:16	50:1,23 51:23
accommodate	addressed 48:3	advocate 38:7	151:24	55:24 60:2
147:19	57:12 66:15	aerial 81:24	alls 129:4	65:7 123:8
account 75:9	86:20 157:19	affect 47:21	alternate 77:16	146:24
134:3	adequacy 74:11	55:18 62:18	alternates 79:13	anyways 44:7
accounting	74:15	affidavit 4:5	amass 85:23	apologize
59:6	adequate	112:16,18	ambulance	28:23 39:4
accurate 15:7	152:16	113:13 115:9	33:23,23	145:11 146:3
26:11 46:16	adhere 21:7	140:6	56:12,23,23	Apparently
162:10	adjacent 12:19	affirm 14:1	64:4	74:12
	29:1 43:16	155:17	amenable	appeal 10:5

PUBLIC HEARING 2/25/2020

12:18 14:12 19:3,5,18 20:10 21:3 39:21 42:21 56:6 57:25 61:11 97:19,21 100:4 108:22 110:10 115:6 128:6 129:24 130:25 131:3 133:17 134:5 152:5 155:9,17 159:21 160:9 appealed 7:8 10:5 14:2 100:4 118:22 appealing 10:14 100:17 110:21 135:24 137:16 appear 11:13 appears 11:12 60:15 74:10 74:25 appellant 3:10 3:23 14:15 94:13 113:4 115:4 appellants 110:9 110:17 113:12,17 appellants' 114:15,20 133:3 append 20:23 apples 141:24 applicable 13:8 20:10 21:4 applicant 2:18 2:20 11:18,21 14:15 22:16 34:24,25 35:19 77:15 86:22 100:9 100:10,17 102:21 103:14 103:17,23 104:8,20 105:20,25	106:4,5 108:8 109:24 113:4 157:17 applicant's 150:18 applicants 10:14 12:1,18,25 13:13 20:10 46:13 86:21 102:17,25 103:2 107:17 108:22,25 application 10:10 11:24 13:18,20,24 18:2 22:13,18 34:23 35:3,5 35:15,21,22 36:13 45:11,25 52:11 65:16 74:21 92:24 100:25 102:16 102:17 103:3,5 103:15,19 104:3,7,10 105:12 106:12 106:18 115:24 117:2 120:18 130:25 131:3 132:17 135:24 136:6 138:8 142:2 145:23 158:7 applications 22:12 91:13,15 106:13 108:19 109:4 141:1 applied 114:14 154:16 apply 11:20 12:10 105:22 106:22 108:2 108:22 114:11 127:10 151:17 applying 114:13 117:5 appreciate	20:5 36:25 55:24 70:22 74:2,5 96:6 119:14 128:13 148:15 160:15 appropriate 94:7 137:3 154:1 approval 11:22 12:25 13:13 88:2 97:7,18 102:25 150:3 155:2 160:9 approve 10:16 19:3,5,18 22:13 36:22 155:9 approved 11:24 22:19 27:4,5 34:20,20 97:19,21 140:22,24 146:18 152:23 158:2 160:9 approving 12:8 12:8 approximately 10:22 11:1 18:3 23:13 25:13,19 26:8 29:4 30:2 32:3,5 39:3,6,11 78:16,25 100:22 101:11 April 32:23 arbitrary 118:14 architect 107:3 107:11,15 108:6 127:15 136:19 architectural 121:4 area 11:9 16:1 19:11 21:13 28:7,17,25 29:18 30:15 34:14,14,18 37:4 38:22	42:2,3,4 44:9 49:9,21 50:6 50:7 51:18 52:1 53:25 57:21 64:18,18 64:24 66:1,3 66:17 81:23 82:1,2 87:1,23 90:1 91:18,19 92:22 94:10 95:7 101:16 117:4,5 119:21 119:21 121:20 122:22 127:15 127:18 146:6 152:18 areas 59:7 83:25 87:5,6 88:9 125:22 131:25 132:2 148:3 arena 142:17 argue 36:10 40:23 64:20 arguing 156:6 argument 13:5 36:11 64:15 118:10 142:7 143:23 147:8 arose 66:10 Article 13:1,7,14 111:22 141:11 asked 70:18 73:10 92:15 105:24 asking 107:3 111:19 asphalt 24:10 33:8,11,14 41:2 55:9 77:8,9 77:23,24,25 78:12 79:4,6 associated 83:12 assume 51:25 69:3 assumes 13:7	assuming 50:25 124:19 124:22 141:18 assumption 154:13 assured 46:13 asthma 49:16 attach 19:13 attached 4:8 107:12 112:18 attaching 39:24 attend 121:8 attendance 15:15 102:13 138:12 160:17 attendee 121:7 attendees 110:23,23,25 111:7,10,11,17 111:20 112:20 113:5 114:8,8 115:9,21,23 116:1 117:11,22 119:2,4,10 120:5,6,25 124:13 127:22 133:4 136:15 136:20 137:13 138:20,24,25 139:3,13 141:4 141:5 151:12 attention 75:18 attest 27:24 attorney 132:22 audience 6:11 9:17,23 99:15 99:21 August 162:18 authority 21:8 153:18 authorize 115:17 authorized 92:22 authorizing 96:12 Auto 112:9 automatically
--	---	---	---	--

PUBLIC HEARING 2/25/2020

13:11 automobile 90:4 average 50:24 127:1 147:2,25 aware 40:2 53:11 76:13 111:9 147:16 awful 66:16 82:6 aye 161:1,2,3,4,5	116:2,4 120:21 120:21 123:14 123:20 124:9 124:23 125:2 125:18 126:2,8 126:16 127:17 128:4 144:15 144:19,23 145:9,19,24 146:13 Baker-Oliver 4:5 106:10 108:5,12,17 130:4 Baker-Oliver/... 100:19 101:1 balance 91:24 banquet 101:6 113:21 114:23 116:19,21 127:14 bar 114:1,2 bark 6:17 barn 117:25 139:6,7 145:14 151:15 Barrett 10:17 11:20 23:5 47:17 50:19 50:23 67:4,7 67:14 69:15,19 69:19,23,23 69:24 70:25 71:15 74:19,23 90:16 128:10 128:11,17 129:20 140:9 Barretts 54:25 66:8,25 72:4 base 72:11 95:11 95:14 129:13 based 13:19 35:21 66:14 66:23 95:20 102:25 105:16 114:24 125:5,7 134:8 145:20	145:23 147:16 148:2 151:11 153:12 155:24 basement 123:2 123:19 basically 30:9 33:20 44:10 44:17 58:12 94:8 118:5 128:17 129:1,17 141:17 148:18 152:5 basis 64:22 battled 93:24 bear 54:13 102:2 bearing 24:5 beautiful 62:7 beepers 50:14 befall 66:17 behalf 14:17 18:1 20:10 42:21 45:24 52:10 56:6 57:24 61:10 65:16,19 67:13 69:9,16 100:10 128:6 129:23 130:25 belief 156:14 believe 8:8 21:4 25:18 28:8 40:11 63:3,14 67:21 68:15 76:14 96:17 116:12 130:15 134:4 145:23 145:24 146:6 151:6 153:21 155:17 157:14 158:24 160:11 benchmarks 20:17 Berger 14:6 best 13:22 28:20 131:20 162:9 better 87:20,20	beyond 53:7 127:8 153:19 big 24:4 34:24 38:24 48:16 49:5,17 50:1 50:16 51:13,15 55:3 61:18 76:18 117:14 119:21 133:24 145:7 bigger 82:1 biggest 45:15 76:9 bike 28:20 BILGES 3:11 18:10,22 Bill 105:10,15,24 106:8 107:10 108:16 Birkman 2:6,6 3:3,3,14 10:12 10:12 14:25 15:18,21,21 16:13,18 17:16 17:18 43:3,7,8 43:9,12,22,25 44:6 Birkman's 48:22 bit 21:20 22:9 26:13 37:4 38:7,24 46:9 56:24 81:14 114:1 147:21 blacktop 53:13 blade 44:24 bladed 44:19 blast 54:18 blasting 28:14 54:3 blessed 53:12 66:20 Blue 77:16 blunt 6:10 bluntly 17:3 90:14 Board 1:8 5:2	6:5,16 7:10 8:24 9:12,15 9:22,23 10:2 10:4,6 13:25 14:3 15:16 17:4 17:23 39:16 43:17 73:19 74:9 75:3,11 79:21 90:21 98:22 99:10 99:13,20,21 100:1,3,5 108:22 109:12 109:14,16 112:22 114:11 149:6 150:1 155:1,5,19 157:9,10 Board's 153:11 Boeuf 48:3 bogeyman 128:24 boils 93:1 booking 148:14 books 112:14 boom 54:10 boss 54:13 bottom 29:14 32:8 bought 16:1 52:24 boundaries 24:14 BOZA 109:3 Branch 24:4 bread 154:3 break 53:3 98:2 98:9 112:5 breaks 17:7 bridal 123:21 bridge 24:3,5,6 33:21 bridges 84:13 84:18 brief 16:11,12 61:15 64:14 110:15 111:22
---	--	---	---	--

PUBLIC HEARING 2/25/2020

<p>139:5 bring 19:9 34:4 48:13 49:1 bringing 135:6 154:5,24 brings 36:23 75:6 128:16 Brinker 106:8 108:13 briskly 98:6 broken 71:19 84:6 146:15 brother 128:11 brought 14:16 48:10 50:21 68:24 94:24 104:16 107:6 122:21 Brown 58:4,5,17 58:20,23 60:11,14,17,20 60:24 61:1,4 brung 48:5 brush 87:7 buffer 12:23 build 116:25 117:4 119:4 121:15 122:16 122:25 139:1,5 150:4 building 6:18,19 6:24 12:7 41:13 101:4 103:1,2,4,8,9 104:5 105:1,3 105:5,9,13,16 105:21,25 106:5,13,17,21 107:7,8,12,18 108:19 111:2,6 111:17,18 112:25 113:6,8 113:9,20 114:4 114:5 115:8 116:10,11,25 117:14,23 118:13 119:2,5</p>	<p>121:15 122:4,5 122:5,16,25 123:13,14 124:4 126:13 130:11 133:5,5 134:25 135:2 135:5,12 136:18 137:12 137:19 138:6 138:13,21,25 139:1,9,12 141:6 142:1,4 144:16 145:8 145:16 147:3 148:8 150:15 151:12,14 152:1 152:1 153:13 154:23 156:24 156:25 157:1 buildings 11:12 11:13 16:6 141:25 built 70:3,6 126:5 139:16 139:18 150:2 buried 48:25 burned 139:19 150:2 bus 62:22,25 63:3,5 Busch 52:23 buses 45:3 83:9 business 44:15 45:6 53:9,11 55:12 81:16 117:3 128:14 130:6 133:21 148:14 businesses 133:11 butter 154:3 buy 47:24 54:23 55:2,4 112:13 118:8 buying 68:8 118:7 141:19</p>	<p style="text-align: center;">C</p> <p>C 1:19 2:5 3:7 3:20 5:1,14 6:1 9:5,10 99:3,9 CA 102:10 CA3 102:10 calculate 125:7 calculated 124:21 125:17 127:20 calculating 125:20 calculation 125:10 calculations 33:12 call 2:3,4 6:4,25 7:17 29:22 53:2,3 57:1 72:20,21 93:6 96:18 103:23 104:11 107:3 112:4 159:15 called 7:14 29:1 77:9,10,25 78:12 calling 118:5 141:17 calls 44:11,14 78:10 capable 40:17 capacity 106:1 capping 126:25 capricious 118:14 car 60:7 147:23 147:24 148:1 card 109:10 care 34:6,19,20 57:4,10 68:2 71:6 72:3 84:3 86:2 87:9,25 88:4 102:23 154:14 Carroll 132:23 cars 28:4 141:24</p>	<p>144:4 147:1 case 9:5,5,13,14 10:1,2 14:8 40:24 62:23 99:3,3,11,12 99:24,25 110:9,10 113:4 118:24 131:8 131:23 134:15 cases 3:8,21 9:6 75:8 99:4 catcher's 134:13 cats 80:4 144:10 cattle 15:24 16:6 83:9 CD 102:10 ceiling 123:25 center 1:2 24:11 101:5 113:21 116:19,21 146:6,8,14 Century 70:4 71:21 certainly 37:5 38:5 62:17 139:15 CERTIFICATE 2:24 162:1 certified 20:7,8 cetera 106:14 153:18 Chairman 5:3 6:3 8:2,7,13,17 8:23 9:20 10:9 14:13 15:1 15:13,19 16:10 16:14,19 17:17 17:19,23 18:8 18:15 19:12,20 19:23 20:2,22 39:15 42:12 42:20 43:5,10 43:19,23 44:3 45:20 46:6 47:1,7 48:19 50:4 52:4,9 52:13,20</p>	<p>55:25 57:6,9 57:15,20,23 58:15,18,21 60:9,12,15,18 60:22,25 61:2 61:6,22 65:9 65:15 67:9 69:5,17,20 70:15 73:7 79:20 80:3 81:10 82:8,17 82:21,24 83:4 83:11,18 84:4 84:17 88:5 89:5 90:8,13 91:11,22 92:6 92:10 94:14 95:15,24 96:8 96:11,16 97:16 97:20,24 98:1 98:19 100:7,13 109:6,9,20,25 110:2 116:3,8 116:17,22 120:14 125:24 126:4,11 127:25 128:5 128:15 129:19 130:19,24 131:9,16 132:10 132:16 134:10 135:18,23 136:11 138:2 139:14 141:13 141:23 142:6 144:7,9,18 149:2,5,10,13 149:18 150:11 152:11,24 153:3,5,14,17 153:25 155:4 155:16,25 156:8,13 158:1 158:8,16 159:3 159:7 160:6,11 160:22,25 161:6</p>
---	--	---	---	---

PUBLIC HEARING 2/25/2020

chairs 105:18 125:8 CHAMBERS 1:3 chance 131:6 change 91:14 changed 123:23 changes 25:4 Chapter 119:16 134:16 150:19 character 34:25 characteristics 133:14 charge 53:18 58:19 112:1 charges 85:19 CHARLES 65:23 chat 131:11 cheap 6:17 check 24:4 119:12 137:9 140:10 145:18 checking 152:10 chevron 24:21 chicken 91:7 children 62:24 63:1 choose 36:2 62:13,15 104:20 150:21 chose 62:7,12 64:23 chosen 111:15 132:7 Chris 56:10,11 Chuck 65:24 68:24 Church 29:25 47:6 51:3,20 79:3,6 Circuit 10:7 100:6 circumstances 91:14 cited 134:18 citizens 23:23	34:5 132:4 city 36:7,8 41:11 45:7 143:5 civil 98:4 160:15 claimed 50:23 clarification 153:7 clarify 96:13 97:3 158:23 clarifying 96:3 Class 111:12 137:1,3 cleaned 81:1 clear 15:2,14,15 21:24 32:18 76:24 82:10 93:3 109:10 150:23 clearly 22:21 24:12 26:17 26:22 27:6 28:12 31:22 32:7,10,23 33:13 114:21 121:9 138:5 client 140:4 clients 112:4 115:19 117:8,9 133:18,22 close 16:7 44:11 44:13 73:9 76:12,14 114:2 closer 85:2,15 closest 85:12 closing 51:23 closures 56:14 Cochran 34:23 67:19 code 12:2,4,5,9 22:8 26:15,20 35:22,24 104:4 105:16 107:7,12 109:2 110:18 111:5,9 111:25 112:3,7 112:23 113:2,3 114:16 117:15	118:11 119:3,24 120:6,24 122:13,23 124:15 133:5 137:10 139:10 139:22 143:15 143:20 150:14 150:23 151:24 codes 12:13 94:21 cold 87:22 colors 150:16,17 come 9:22 21:5 30:22 44:1,24 46:9,10 55:7 68:3,18 72:11 84:11 88:20 99:20 109:14 113:25 114:10 115:23 117:11 119:7 122:9 126:23 127:9 127:23 133:24 137:9 139:17 139:22,24 145:1 156:17 comes 40:5,8 54:12 82:18 84:8 91:7 111:4 122:23 136:22 142:23 comfortable 122:12 126:23 comfortably 127:4 coming 21:9 35:10 59:7 128:23 147:24 COMMENCING 1:11 comment 9:18 46:24 79:18 99:16 101:24 commentary 26:20,22 27:7 comments 9:24 9:25 11:21	99:22,23 102:2,7 commercial 59:11 60:8 103:1,9 132:3 133:21 154:15 Commission 1:3 5:2 10:15 11:22 12:11,15,17 13:16,21 15:12 21:12,24 64:16 84:20 102:8 108:14 109:1 150:10 162:17 Commission's 131:21 commissioner 5:4,5,6,7 7:19 7:21,24 8:4 27:24 37:3,8 37:11,19,25 38:3,6,9,13,20 39:2,7,12,19 75:13 77:6,11 77:18 78:14,18 78:22 79:1,5,9 79:15,22 80:1 80:11 85:8,20 86:13 87:2,10 87:15 88:7,13 88:16,19 89:3 89:7,17,20,25 90:7 91:6,16 91:25 92:8,11 93:7 94:15 95:22 96:2,15 96:21,24 97:2 97:10,12,14 105:9 106:8 108:13 119:11 119:15,19 120:7 120:12 123:11 123:18 124:1,3 124:6,17,24 125:12,15,23 127:13 134:12 134:19,23	135:10,16 142:10,13 143:12 144:2 144:25 145:5 145:12,17,22 146:11,21 147:9 147:20 149:7 149:11,16 150:7 150:13 151:1,23 152:2,9,13 154:7,18 155:8 155:11,13,22 157:13,22 158:11,20 159:5,18,23 159:25 160:2 160:4,24 161:2 161:3,4,5 Commissioners 31:12 37:7 131:20 Commissione... 136:8 Commissions 108:16 commit 86:11 committed 111:12 common 36:24 community 35:13 59:18 72:18 compacted 86:10 87:20 compelled 6:17 6:23 complains 140:9 complaint 58:24 111:24 136:24 140:8 140:10 complete 100:25 completed 36:17 154:9 completely
---	--	--	---	--

PUBLIC HEARING 2/25/2020

93:21 completeness 102:21 completion 53:17 complies 92:24 comply 112:14 120:9 124:14 146:2 compounded 64:25 compromising 83:23 computer 30:12 concept 23:10 93:17 136:20 concern 21:20 22:10 24:15 27:14,15 29:18 36:19 45:16 49:6,17 50:16 53:14 55:16 73:2 76:1,1,2,9 76:18 85:24 94:9,18 116:24 131:19 132:4 143:25 151:2,8 concerned 31:13 34:17 42:8 47:4 51:19,21 54:2 64:2 75:23 76:3 89:18 91:2 93:12,19 94:4 133:22 concerning 10:1 75:2 99:24 concerns 22:6 23:22,24 36:12 48:1 49:12 52:2 54:1 62:17 65:1 66:14 71:16 72:2 75:4 85:21 86:1 concise 76:24	conclude 10:2 35:16 99:25 CONCLUDED 161:9 concludes 13:16 160:12 conclusion 9:25 99:23 concrete 31:7 55:8 concurrently 105:23 condition 41:3 51:7 80:23 86:15 154:2 conditional 10:16 11:6 21:22 22:11 39:25 65:19 67:14 69:10 91:2 92:24 95:20,25 96:10,12 97:8 97:21 101:15 102:13 104:17 104:24 110:12 114:11,13 115:1 115:25 118:16 119:8 126:15 127:10 134:8 137:11 139:18 139:24 140:1 142:22 143:24 148:17 149:23 151:4 153:20 conditions 11:25 13:10 22:19 25:16 39:23 45:13 80:18 81:4 86:21 91:4 110:14 133:13 137:11 143:8 153:18 154:3 155:20 conducive 25:4 confidence 83:6	confident 66:22 configuration 113:21 conflict 25:23 74:20 confusing 110:21 111:4 120:5 connection 136:12 Conner 2:7 3:3 10:13 46:4,5 46:23 47:3,9 48:21 50:5 52:8 consider 22:25 25:25 39:24 44:5 55:16,24 59:21 76:15 148:7 consideration 21:5 65:8 148:16 149:4 considerations 36:13 considered 131:23 considering 21:3 22:12 constantly 87:19 constructed 34:13 36:7 72:16 116:9 126:1 construction 13:3 50:14 53:10,15 130:11,12 contact 67:3 contemplating 113:22 contention 114:15,15 121:1 contingent 102:25	continue 10:8 24:25 61:3 90:14 CONTINUED 4:2 98:11 continuing 53:6 continuously 82:2 contracts 53:16 control 20:9 58:9 conversation 107:6 convince 47:20 convincing 21:25 93:3 copied 108:12 copies 19:8 copy 18:5,18,23 22:3,4 correct 18:22 28:24 37:13 38:4 64:9 78:5 79:7,11 82:20,23 88:8 89:12 97:20,25 108:21 109:18 109:19 125:1,2 125:17,18,19 143:13 145:25 146:12 correspond 20:20 corresponds 102:21 corridor 20:13 Corvette 112:10 112:12 118:8,8 141:20 cost 55:10 95:13 costs 85:5 counsel 5:11 86:19,20 104:22 106:25 Counselor	105:9 count 47:2 70:4 140:11 141:14 counted 70:2 country 75:20 county 1:1,2 3:4 3:6,7,17,19,20 5:2,10,11 6:5 9:1 11:16 12:1,7 12:16,16 14:10 15:2 21:6,11,12 24:6 25:11 26:14,16 27:5 27:20,23 28:9 29:10,11 30:4 31:12 32:1,2,3 33:7 33:21,21 36:15 36:20 37:9,14 37:15,16,18 40:13 41:14,17 41:22 51:4,7 56:14 62:22 64:23 66:19 67:23 68:2 69:2 70:7 71:4 72:8 73:3 74:24 76:17 79:23 80:10 80:13 81:19 83:7,15 84:14 85:1,5,13,15,18 86:8,22 87:5 87:24 88:3,9 91:9,18 92:21 92:23 93:19 93:23 94:11,17 94:21 95:1,5,11 98:4,23 101:20 102:5,7 105:8 108:15 110:20 111:23 112:3 117:20 119:20 129:13 132:4,8 134:20 135:12 150:19,21
--	---	--	--	--

PUBLIC HEARING 2/25/2020

<p>County's 12:11 12:22 27:21 34:15 36:17 couple 21:10 48:10 56:20 58:7 62:19 120:23 course 7:12 14:14 55:15 95:17 108:21 court 10:7 17:7,8 46:19,21 73:16 100:6 112:3 162:2,15 courtesy 6:20 courts 18:16 73:17 covered 133:3 cracking 31:7 cramped 121:22 credence 27:13 credibility 13:22 credible 13:17 22:16,21,23 34:22 35:4,14 35:20 creek 24:4 29:7 47:25 48:3,9 63:22 84:6 88:25 89:15 89:21 creeks 84:21 crime 111:12 critical 74:11 crop 90:3 crops 15:24 81:7 81:8 cross 77:17 78:6 crosses 24:4 crossing 30:25 31:2,8 84:6 88:25 crossings 36:21 71:11 79:14 84:21 CROSSTALK 87:13</p>	<p>crumbling 34:7 34:15 crux 92:9 CUP 13:6,7,11 13:24 70:17 97:18 104:20 105:2,23 106:22 108:3 138:6 142:14 151:21 CUPs 13:8 current 11:18 33:10 84:18 86:20 currently 7:12 34:20 38:15 curve 23:20 24:9,16,20,21 25:2 71:10 curves 32:15 curvy 45:5 67:24 cut 87:7 cycles 63:12</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D 2:1 3:8,21 6:1 9:6,11 14:8 99:4,9 128:17 136:23 dad 16:1 44:7 daily 49:14 54:19 68:12 damage 32:6,8 65:4 Dan 106:10 108:16 112:8 113:25 116:12 120:21,21 123:11 138:17 144:14 dance 114:2 116:14 Darrell 128:10,11 daughter 28:19 126:22 Dave 106:10</p>	<p>day 25:22,25 42:7 44:23 45:2 50:17,24 53:19,22 54:9 59:5 63:8 107:2,10 109:3 112:8 150:21 days 40:21,21 50:10,12 142:24 daytime 6:13,14 98:5 deal 49:23 119:7 dealing 94:20 130:15 143:1 dealings 130:6 dealt 92:11 143:3 debate 151:9 Debbie 130:4 Deborah 2:15 3:16 4:5 100:16,19 101:1 106:10 108:17 112:18 113:13 December 10:15 11:23 32:7 106:7 decent 29:10 44:24 decide 105:4 112:22 114:8 117:8,9,14 127:7 decided 104:23 106:20 156:8 decision 10:3,4 10:5,14 14:2 15:11 36:2 41:8 41:9 96:4,10 100:2,3,4,17 108:24 110:11 115:16 118:22 135:25 137:24 152:6,7 153:12 159:22 160:10 decisions 12:10</p>	<p>17:8 22:11 148:20 decor 125:16 decorated 54:7 dedicated 105:14 deep 36:10 deeper 89:14 defer 116:2,12 144:7 deficient 31:22 33:25 34:1 91:8 definitely 49:19 delay 145:11 demonstrate 85:24 denial 3:25 91:13 95:20 109:3 114:20 152:21 153:22 155:24 156:1 156:15,17,18,19 denials 91:12 denied 13:20 22:22 35:22 97:23,24 134:5,6 156:11 156:23 157:8 deny 3:12 15:5 15:8 19:3,5,16 19:18 21:24 93:2 94:17,22 95:25 100:18 111:16 115:13 151:11 152:19 153:12 156:21 157:7 denying 101:8 109:17 118:5,12 118:25 Department 3:25 12:7,14 70:7 101:4 102:19 103:3,7 103:8 107:9,19 109:22 115:24</p>	<p>149:15 Department's 117:8 depending 117:22 Derek 5:6 6:8 7:20 94:16 97:11 125:4 158:8,18 159:24 described 83:13 162:7 describing 134:20 DESCRIPTION 3:2 4:3 design 127:4 designation 105:18 132:1 159:13 designed 105:1 108:2 desire 127:11 149:22 desires 10:5 100:4 destination 17:5 detail 21:21 determination 14:2 43:21 157:10 determine 121:5 122:22 determined 126:6 Detmold 10:23 27:10,18 29:24 30:1,2 37:15 44:12 51:20 78:9 detriment 36:22 41:5 detrimental 22:1 35:17 93:5 94:1 develop 87:23 developer</p>
--	--	--	---	--

PUBLIC HEARING 2/25/2020

35:25 36:9,10 36:12 41:7,18 41:23,24 42:1 68:17 development 12:3,24 21:13 68:20,22 132:24 devil's 38:7 diagnosed 49:16 dialogue 149:21 dictate 68:6 difference 142:4 145:7 149:8 150:22 different 22:14 29:21 31:5 37:6,20 47:11 56:15 63:2 118:7 121:9 125:6 136:20 141:19 143:2,17 differently 147:21 difficult 90:6 dig 82:3 digging 147:10 diminishes 49:9 direction 24:12 69:3 79:10 directional 30:8 directions 30:13 30:18,18 directly 41:6,6 117:7 director 5:9 56:11 100:18 101:8 102:24 103:10,21,23 110:11 111:15,24 115:17 118:11 137:18 disagree 35:14 70:24 138:10 141:16 142:3 disapproval	150:25 disaster 134:24 disclose 18:2 discourage 84:20 discouraged 84:20 discovered 105:6 discretion 111:15 114:16 118:12 118:15,17,19,20 119:10 120:11 134:16 142:23 144:1 157:11 discuss 73:21 151:3 discussed 86:16 94:19 106:11,25 108:17 154:22 discussing 93:18 94:11 151:10 discussion 2:13 2:21 10:1 74:9 79:21 90:14 95:16 99:24 149:5 152:12 152:25 154:6 155:5 discussions 119:20 140:3 disgorge 49:22 disk 54:18,21 disliking 134:13 disputes 109:13 disruptive 133:12 distance 23:20 24:8 47:12 distances 78:15 distract 11:4 distress 81:20 81:25 83:10 distressed 82:1 district 10:19	11:3,9 14:7 37:12 41:12,17 56:12 57:18 58:11 133:20 ditch 28:8 ditches 64:11 Ditmold 88:23 DNR 48:4 document 19:16 19:19 documentation 115:20 documents 113:18 DOCUMENTS... 3:13 dog 66:4 doing 51:17 92:15 121:11 127:11 142:16 dollars 34:9,16 door 129:1 double 152:10 doubt 65:6 drama 65:5 draw 138:18,19 drawing 126:7,9 127:15 154:22 158:14 drawings 144:12 153:9 154:24 155:3 157:18 159:10 drawn 136:16 138:7,14 158:5 drip 53:4 drive 31:12 36:7 44:2 45:9,13 56:21 63:8,9 63:10,14 68:6 68:11 90:4 112:12 118:9 141:21 147:22 driven 119:3 driver's 23:11 24:22 drivers 68:7	71:2,3,13,13 driveway 15:25 driveways 40:6 71:8 driving 48:23 dropoff 63:21 drove 24:9 48:18 dry 81:3 due 19:8 44:8 56:14 80:17 81:17 82:4 111:13,21 dumb 119:6 dump 26:10 31:3 49:1 51:2 51:13 54:8,10 68:7 73:4 90:5,5 dust 49:11,13,15 49:17,20,24 50:9,11 75:24 dwell 29:20	160:21 earlier 32:15 70:18 73:25 74:14,21 100:8 122:21 143:5 151:7 160:16 early 52:22 53:17,24 Earth 32:9 easier 134:25 easily 36:18 east 1:4 23:4,14 25:1 37:23 38:1 130:5 eastbound 24:11 eastern 76:17 easy 64:5 eating 49:20 economic 85:4 economically 38:18 edification 123:13 effects 75:24 efficient 91:9 effort 16:22 92:2 egg 91:7 eight 11:24 either 104:9,23 105:20 106:20 131:13 136:12 139:17 emergency 26:23,24 27:2 28:13 57:1 63:25 64:3 121:6 127:19 emotion 66:24 emotions 67:6 emphasize 62:21 employees 147:22,24 148:4 empty 54:8,10
--	---	--	--	---

E

E 2:1,5 3:1 4:1
5:1,1 6:1,1
102:10
e-mail 107:11,14
107:20 108:5
108:8
e-mails 56:13
140:19
Eagan 2:9,17
5:9 7:17,18,20
7:23 8:1,3,5,11
8:15,19,22,24
10:11 15:10
19:25 28:24
79:24 86:18
96:6,9,20,23
97:1,5,11,13,15
97:17,23,25
102:1 140:17,21
140:25 144:20
145:4 157:15
157:24 158:4

PUBLIC HEARING 2/25/2020

EMS 56:11	153:2 155:7	160:17	144:21 145:2	expecting 72:5
encounters	entire 11:13 34:8	event 4:4 101:5	excellent 128:16	126:23
63:6	38:12 44:19	102:11,12	Excelsior 18:1	expense 117:4
encourage	148:7	105:14 106:23	23:20 25:3	expensive
60:2	entirely 98:15	114:24 118:3	26:2 33:6,8,14	126:9
encroachment	entitled 150:5	119:17,22 121:6	37:14 40:16	expert 53:2,3
70:1	entrance 32:1	121:8,12 122:1	45:4 47:5,6	Expires 162:17
endorse 84:23	81:23 84:2	122:6,19	51:3,20 52:18	explained
ends 46:19	86:12 88:12	126:25 127:18	58:5 59:12	105:11,15
enforce 106:2	154:15	134:24 136:16	60:17 75:17	108:21
107:1 112:3	environmental	146:6,8,14	77:24 78:23	explaining
150:20,20	48:1 75:24	events 101:14	83:3,6 86:12	108:7
enforceability	equal 91:24	113:5 116:1	88:12	explanation
135:11	92:1	125:22 133:24	exception 76:6	73:5 151:5
enforced 12:13	equipment 27:1	145:20	exemption	exploding
enforcement	28:15 53:10	eventuality 17:6	107:7,12	142:23
104:4 111:23	64:1,3	everybody 16:11	exercise 53:2	explosives 27:1
111:25 115:11,13	erection 13:3	18:5 46:9,11	exhibit 3:5,6,7,8	exponentially
117:16 136:22	erosion 20:9	60:4 64:1 69:1	3:11,13,14,18,19	59:9
140:7	escapes 90:15	73:10 74:6,22	3:20,21,24,25	extent 73:22
enforcing	especially 25:6	everyone's	4:4,5 9:3,4,5	85:22
107:23	84:16	20:5	9:6 14:8 18:20	exterior 150:17
engineer 16:9	essential 25:5	evidence 9:8	19:1 20:24,24	extraction 10:17
20:7 108:5	essentially	13:2,18,23	20:25 28:5	11:4
135:5 158:6	20:11 22:14	18:24 21:25	43:2 99:1,2,3	eye 74:10 90:21
engineer's 84:7	26:3 27:2,9	22:16,21,24	99:4 112:17	141:8
engineered	28:1 33:1,22	34:22 35:4,15	113:12,17,19	
153:9 154:21	33:25 34:10,11	35:20 42:17	114:20 136:23	F
154:24 155:2	36:24 38:18	42:25 59:24	137:17	facilities 26:18
157:17 159:10	39:10 40:22	60:1 63:7	EXHIBITS 2:8	facility 28:12
engineering	120:8	74:16 75:14	2:16 4:7 9:10	121:17 124:13
18:11 20:14	estimate 39:9	87:6 93:3	42:19 99:9	127:4
29:16 34:23	estimated	99:6 112:17	115:4	fact 13:7 45:12
67:19 84:8	50:20	113:12,15 115:2	exist 116:10	66:23 72:8
114:5 158:14	et 106:13 153:18	exact 144:16,24	138:7	74:2 83:19
enjoyed 72:13	ethical 130:7	exactly 70:10	existing 12:21,21	121:2 122:15
Enochs 32:1,2	evacuate 121:6	85:10 97:6	50:25 113:8	127:1 138:4
67:1 70:9 72:9	122:6	109:16 116:24	exits 31:16	149:20 150:20
76:12 81:21	evacuated	135:6 149:14	expand 145:13	factor 49:11
82:5,12	127:18	examine 86:8	expect 32:21	facts 10:24 35:2
ensuring	evaluating 12:7	example 78:15	67:4	35:6 43:21
107:25	evaluation 76:4	exceed 102:12	expectation	44:4 51:24
enter 14:5 30:14	evening 6:4,10	111:11 114:9,10	15:14 159:9	100:24
enterprises	17:3,22 65:24	114:25 116:1	expected 34:5	factual 67:21
132:3	75:12 98:14	126:17	51:14 64:24	failure 32:13
enters 25:15	110:4 115:16	exceeded 108:1	101:14 102:12	fair 49:22 79:12
entertain 39:23	148:16 160:14	exceeds 38:19	121:8	fairly 29:7

PUBLIC HEARING 2/25/2020

121:22	28:2,3,11	64:4 111:5	40:13 86:9	62:22 64:23
falling 54:20	40:13 43:15	114:5 118:1	88:10,21 89:16	67:23 70:7
66:16 71:24	44:21,22 51:12	121:4 122:7	124:10 125:5,7	71:4 80:10
falls 54:21	74:24 76:7	124:19 136:19	133:23	84:14 85:1,13
66:22	81:13,13 83:20	138:11,14,18	footage 148:9	98:4,23 102:5
false 58:25	83:24,24	first 9:15,19 18:5	150:15	112:3 117:20
falsehoods	101:21,21	23:2 55:1 91:7	forbid 63:25	132:4,7 135:12
66:18	105:17 122:23	98:18 99:13,17	foregoing 162:4	frankly 71:6
familiar 18:4	122:25 123:2	100:9 136:6	foremost 45:15	73:12 74:10
55:13 71:13	123:15,16	142:16	foresee 53:5	144:11
76:10,16 82:11	125:10	fiscal 93:17	forever 88:15	Fred 5:4 6:7
families 49:21	fell 54:9	fit 60:7 68:9	forget 63:10	7:23 55:14
98:7	field 123:9	121:24 123:3	76:6 90:18	97:13 124:2
family 16:3	fields 81:7	126:18 138:19	Forgive 124:9	129:9 148:12
62:10 67:7	Fifteen 55:9	five 38:22 39:6	formal 74:20	160:1
71:20 130:7	fight 66:4	39:8,11 81:25	format 152:4	free 70:11 71:1
family's 151:15	figure 29:9 31:3	84:15 117:10	formerly 10:19	91:14
fancy 129:3	145:6 146:25	fix 32:19 34:1,2	forth 21:3 86:24	freeze 87:22
far 45:9 68:17	figured 147:21	71:19 72:5,6	156:2	Friday 19:7
70:25 78:19	figuring 125:20	104:12	forthright	109:4 143:17
128:19 130:14	file 2:6,15 3:3,16	fixed 94:24	130:16	friendly 18:16
143:3	9:5 10:11 14:8	flesh 134:8	forward 14:18	friends 66:5
farm 16:1 48:22	99:3 100:16,19	flip 54:23,24	19:24 46:1	72:20,21,24
71:21 151:25	102:6 103:13	flood 44:18	58:1 61:11	friendship
farmers 81:6	105:10,19	48:12	67:14 69:18	72:23
farming 15:24	108:7 112:1	flooding 29:3	75:12 86:8	front 9:22 18:6
Farms 70:5	115:24 137:5	44:20 89:8	131:4 132:18	18:17 31:14
fast 64:5	139:24,25	floodplain 12:19	140:4,5 154:2	47:21 54:21
faster 118:9	140:10 153:10	12:21,24 20:8	found 36:18	99:20 121:21
favor 11:23	156:5	28:25 43:16	110:17 130:7,9	121:25
96:22 97:8,18	filed 17:10 136:6	48:7,8	four 38:21 39:11	fruition 66:10
159:19 160:25	FILES 3:8,21	floor 1:3 43:11	72:8 81:25	fuel 55:10
fear 143:10	fill 145:8 147:3	43:20 114:3	97:17 108:8	full 76:19,22
February 1:10	financial 41:8	123:2,21 148:8	147:17,23	124:22,25
6:2 103:14,22	financing 68:17	flowing 29:17	148:1 156:22	fully 7:10 124:14
109:5	find 8:14 31:4	folks 6:10 46:8	160:8	127:9
fee 120:8	128:25	80:4 111:8	four-wheel	function 63:18
feel 6:12,17 40:7	finding 74:14	112:16 113:23	56:21 63:9	Fund 33:21
62:16 72:12	115:6	141:17	90:4	funding 84:22
74:22 95:3	fine 15:18 49:13	follow 117:19	franklin 1:1,2 3:6	further 24:17
134:12 150:7	49:15,17	152:4 158:22	3:7,19,20 5:2	79:4 88:5,15
150:12 151:2	157:21	followed 9:15	6:5 8:25 12:1	95:16 109:21
158:23	finish 16:17 49:3	26:16 99:13	12:16,16,22	134:8 152:12
feels 6:22 20:9	fire 12:2,5,9	follows 98:12	14:10 21:12	152:24 155:5
150:19	14:7 22:7	102:16	25:11 26:14	future 21:15
fees 103:15	26:15,17,18,20	foot 26:11 27:3	27:21 33:20	53:7 63:3
feet 10:23 11:17	26:21 33:23	27:11,18,21,23	37:9 56:13	83:17 93:19

PUBLIC HEARING 2/25/2020

127:7,12	glazed 16:22	58:11 59:8,12	Google 30:8	great 59:14
<hr/>	gnashing 66:11	59:15,16,17,18	32:9,9	72:25 145:9
G	go 14:22 18:14	60:5 62:17	Gordon 5:3 6:4	green 25:10
G 2:5 6:1	20:12,19	63:23 64:5	8:1 97:6,15	grievances
garage 55:21	22:25 48:2,8	67:25,25 68:3	100:11 118:10	66:21
Gary 52:12,17	48:16 50:2,19	68:4,6,8,14,15	128:21 137:2	groom's 123:22
58:4,5	52:18,23	68:23,25 69:1	141:6 160:5	ground 29:7
gather 23:7	53:20 55:21	69:13,14 70:5	gotten 74:3	55:8 90:3
general 21:14	55:22 56:18	70:20 71:3	govern 12:6	group 113:23
22:2 25:6	60:3,5 63:12	72:3,11,24	governed 8:25	130:16 149:1
35:18 39:20	78:2,4,19 79:11	73:9,14,20	98:23	groups 33:20
42:2,3,4 93:15	80:24 81:5,20	75:10 82:8	GOVERNMENT	149:23
93:22 131:7	82:3,5 84:11	86:4,12 89:1,11	1:2	grow 59:9 81:7
generally 11:10	105:2,10 112:9	94:3,6,12 95:1	GPS 30:11,23	82:1
generate 129:15	127:8 128:25	95:12,17,19	31:1	growing 62:24
generated 34:2	129:6 135:14	98:1 102:1,3	grade 81:5,22	grown 87:7
generations	136:24 140:10	106:16 109:11	156:9	grows 95:5
49:22	141:11,14	109:23 110:12	graded 80:16	Grutsch 27:24
gentleman 54:6	149:23 152:22	110:13,24 112:6	grader 44:19	40:14 80:8,9
gentleman's	154:10 158:15	112:17 113:25	48:17,23,24	80:14 81:12
76:7	God 63:25	115:13 117:24	80:19 95:11	82:15,20,23
gentlemen	God's 75:20	119:22 120:2,2	graders 80:24	83:1,5,16,21
80:19	goes 15:25	120:3 125:22	grading 49:3	84:5,19 85:11
genuine 16:22	25:20 36:23	126:5,13	graduation	86:6 87:4,14
141:15	49:24 54:18	128:19,25	53:2	87:17 88:11,14
Gerald 30:10,10	75:19 79:8	129:6,11,12,13	grain 40:18	88:17,23
71:14,15 72:7	80:13,15 81:16	129:14 133:23	44:8 83:8	89:12,19,24
79:8	88:14 92:19	136:2 137:8,13	grandpa 52:24	90:2,12 106:9
getting 82:7	112:10 141:20	137:14 138:16	grant 109:1	guarantee
95:11 100:14	145:13	138:19 139:23	114:22 137:25	142:18,19
104:17 126:22	going 6:13,13	140:3 141:8,18	157:11 158:25	guardrail 63:22
give 16:16 17:23	7:2,3,15 14:22	145:8,10	granted 65:19	guess 37:8
35:11 62:1	15:5,8 16:11,16	147:22,23,25	91:3 129:14	39:20 48:4
102:2 112:6	18:17,18 20:12	148:3,20	134:2 137:23	59:25 69:13
129:7 142:20	24:12 26:2	151:18 152:22	141:9	86:14 96:4
144:24	29:8 31:4,17	156:21,21 157:1	grasp 37:6	119:19 124:18
given 21:18	34:6,21 41:14	157:3,3,7	88:22	131:13 134:15
22:16 72:14	42:4 43:4,13	160:23	grass 147:13	135:4,6,11
73:13 133:13	45:1,7 46:8,10	good 6:3 17:22	grave 76:1,1	138:7 139:14
137:19 140:5	47:19,21 48:2	35:1,12 39:9	gravel 10:18 11:5	139:19 143:23
154:16	48:7,8 49:19	55:1 59:18	34:8 60:22	150:11 152:3
gives 23:10	50:2,10,19,20	61:16 64:21	75:2,22 76:20	154:8 159:15
27:13 53:17	51:1,14,15,22	65:23 67:2,22	76:22 77:3	guests 101:13,14
63:18 111:14	53:12 54:3,14	74:19 76:24	79:11 83:12,13	105:1
118:11,15	54:18,19 55:3	88:22 95:13	90:22 94:20	guidelines
giving 157:17	55:5,5,6,17,19	110:4 120:24	gravely 91:2	124:19 152:20
glad 92:15	56:21 57:1	152:18,18,19	gray 86:25	guy 35:12 55:2

PUBLIC HEARING 2/25/2020

guys 22:3 29:19 50:2 51:24 56:17 58:9 60:3 92:14 102:2 121:3 128:12 150:8 156:2 guys' 39:21	38:23,24 40:19 41:4,25 59:12 77:14,16 78:5,8 85:15 85:17 hauled 38:16 38:25 68:13 70:8 hauling 37:21,21 37:22 59:8 85:3,18 haven 14:6 37:22 38:16 45:7 56:11 57:19 66:2 71:5 72:6 85:13 hay 117:25 139:6,7 hazards 25:7 49:24,25 HDR 36:17 head 5:5 6:8 8:3,4 89:2 92:11 96:20,21 96:24 119:11 119:15,19 120:7 120:12 121:21 134:12,19,23 135:10,16 140:17 150:7 150:13 151:23 155:22 160:4 161:3 health 21:14 22:2 49:23 93:15 healthy 35:17 hear 7:6 40:18 75:5,7,14 79:23 80:2 129:8 heard 3:8,21 7:2 9:6 15:6 19:21 22:8 47:8,10 50:3 52:10 54:3 56:5	61:10,19 63:7 64:15,17 71:23 71:24 72:1 73:11 74:5,6,12 90:23 99:4 118:17 132:17 133:7 142:6 hearing 1:9 8:20,25 9:7,14 9:18 10:1 21:25 38:17 53:23 63:15 66:21 71:16 72:21 86:23 93:4 98:18,23 99:5 99:12,16,25 128:22,24 134:7 154:10 158:3 160:7,12 hearings 75:15 heavy 27:1,2 28:14 53:10 63:17,23 82:4 heck 128:25 held 162:6 help 43:21 80:12 85:4 helped 55:14 herding 80:4 144:10 HERETO 4:8 hereunto 162:12 Herman 38:23 53:7 Herrmann 132:21,22 134:17,22 135:8,15,22 Hey 124:2 Hi 58:4 120:21 high 40:24 56:14 high-tops 121:24 higher 89:16 125:9 highest 25:21	25:21 45:16 highlighted 21:10,16 highly 133:22 highway 14:9 23:4 25:1,10 25:24 27:20 30:4,14 31:24 32:2,4 36:6 51:5 53:5 67:1 70:7 74:24 77:20,21,22 77:22 79:8,24 80:9,19 81:24 82:18,19 83:2 90:18 100:22 106:9 Hilges 16:9 17:22,25 19:15 19:22 20:4,6 21:2 37:10,13 37:23 38:2,5 38:8,11,15,21 39:5,8,14 40:1 42:16 69:13 70:22,23 77:5 77:8,13,20 78:16,20,24 79:3,7,12,17 hill 56:21 63:19 history 66:23 74:19 75:14 87:16 102:4,6 130:12 hit 22:9 26:12 26:13 34:18 93:14,23 94:2 120:8 hits 34:24 71:22 hitting 120:24 Hoeman 10:21 10:22 11:15 15:22 23:3,15 26:1,2,9,25 27:9,14 29:14 29:25 31:8 37:14 39:10	40:11 42:1 43:8 44:7,9,12 44:16 47:6 48:21 51:3,20 56:15 57:8 60:13,19,23 61:17 62:22 62:25 63:15 63:19 65:3 70:10,10 72:5 72:6 75:16 78:1,2,7,19 80:15,17 81:11 81:12,13 88:14 Hoff 5:7 6:8 7:18,19 79:22 80:1,11 85:8 89:7,17,20,25 90:7 94:15 95:22 96:15 97:1,2,10 123:18 124:1 127:13 144:2 144:25 145:5 145:12 146:21 147:9,20 152:13 159:17 159:18,23 161:5 hold 55:25 61:6 83:7 105:13 111:3,3,17 116:3 116:16 118:2 121:17 122:18 129:19 135:1,2 139:1 148:1 151:14 home 7:4 71:22 homes 34:13 72:16 honest 8:12,14 93:21 130:16 honestly 63:24 129:12 Honor 110:5 116:7 121:13 136:5
--	---	--	--	--

PUBLIC HEARING 2/25/2020

hope 43:25 51:23 59:21 62:1 66:6 157:10 hopefully 60:1 hopes 104:17 horizontal 23:20 24:9,15 24:19 25:2 71:10 host 101:2 hour 23:21 46:12 112:11,12 118:9 141:22 143:19 hours 118:17 143:3,14,17,17 143:22,25 house 15:23 16:6 63:25 92:19 116:25 123:1,4 126:14 127:4 135:13 145:15 housekeeping 14:23 160:13 houses 50:7 54:24 70:3,6 Howard 52:23 humanly 58:22 hundred 145:19 hundred-year... 151:15 hurt 47:18 129:11 husband 62:5 64:9 hysterical 66:15	43:1 99:7 113:16 115:3 identified 3:24 18:19 23:5,16 28:10 30:17 72:4 78:3 IFC 28:12 images 32:23 32:25 imagine 37:21 65:2 81:17 immediate 49:9 50:6,7 66:3 130:4 immediately 29:1 impact 94:12 important 91:17 importantly 130:9 impossible 63:13 141:14 149:15 impressions 75:11 91:5 improve 41:24 41:25 68:21 84:18,21 86:21 88:10 92:2 improved 42:5 68:1 92:5 improvements 48:15 51:17 59:13 68:19 improving 36:20 inadequacy 74:17 inappropriate 133:13 incentives 53:17 inches 33:10,14 include 73:14 included 17:2 18:9,11 73:14 74:7 107:13,15 107:21 108:9	111:22 158:6 including 26:16 103:5 106:12 121:11 148:5,8 incorporated 12:11 incorrect 77:12 104:9 increase 42:7 72:10 indicate 74:16 149:25 indicated 73:25 110:19 111:8 indicating 13:2 102:24 104:8 106:4 individual 95:7 indoor 114:23 indoor/outdoor 101:6 industrial 27:2 28:14 132:3 industry 54:24 inevitable 51:6 51:9 infeasible 38:18 inform 103:23 informally 7:8 74:1 information 18:12,13 33:3,7 61:24 103:18 103:21,25 104:2,9 informed 103:17 104:19 107:8 infrastructure 34:18,19 40:9 41:5 42:2 72:1 73:1 inhabitants 21:15 initial 118:23 injunction 137:4 141:12 install 81:18,22	installed 80:17 instructed 109:2 INSTRUCTIO... 2:3 insufficient 87:6 94:20 intend 73:24 124:14 intended 121:16 155:1 intending 88:24 intent 124:25 127:3 155:15 intention 122:11 126:13,17 127:21 153:11 intents 116:23 interesting 30:7 40:2 interior 68:19 150:16 intermittent 12:20 intermittently 40:20 International 12:2,5,9 22:7 26:14,15,20 internationally 27:4 interpretation 145:23 151:22 interpreting 117:16 interrupted 15:17 61:3 intersection 26:3 27:18 78:1 introduce 112:17 investigate 111:25 136:25 invited 42:4 121:8 invites 41:5 inviting 31:21	involved 16:4 85:5 118:23 iota 139:12 irrelevant 13:5 36:11 72:22 113:6 121:1 issuance 112:24 115:17 issue 13:5 24:20,20,24 45:1 48:3,4,5 66:6 68:3,10 74:11 88:18 91:23 92:12,21 95:2 103:10 104:21 109:2 110:14 115:11,17 116:15,21 137:21,21 140:12 141:3 144:22 146:19 148:13 151:19 153:8,22 158:14 issued 13:6,8,9 50:10 101:8 103:10 104:8 106:3 109:17 issues 23:20 24:9,16 25:2 27:19 36:1 41:8 49:23 57:12 71:10 87:11 102:22 102:23,24 104:12 106:4 106:11 108:18 109:13 134:9 135:11 143:2 it'd 70:5 it'll 15:7 56:25 129:15 item 21:16 items 7:11 102:20 itinerary 3:14 43:4,13
I				
IC 40:12 ice 63:10 idea 48:24 62:2 66:12 93:9,11 104:16 151:13 IDENTIFICATI... 3:2 4:3 9:9 18:25 42:18				

PUBLIC HEARING 2/25/2020

J	156:20	55:23 57:4	lane 24:11,14	liar 118:5
J 3:3 15:18,21	Keeping 36:19	58:9 59:2,3,9	53:6	liberty 121:11
16:13,18 17:16	key 22:23	59:11,14,16,22	lapses 13:11	life 38:12 41:21
17:18 69:19,23	26:15	60:3 62:5,14	large 28:14	50:5,18 62:18
jail 129:6	kind 20:16 21:16	62:19 63:5,6	127:2 138:6	64:24 71:19
James 2:7 10:12	23:9 24:10	63:24 64:6,15	larger 68:12	132:5,6
46:4,5,6	25:2 30:6	67:6,6 71:17,21	76:5 143:1	lighting 102:18
69:15,19,23	43:3,13 50:15	72:4,15 74:22	149:22	lights 53:21
January 28:23	50:15 54:12	75:20 77:2	late 53:18,24	Likewise 133:9
28:24 29:6	58:25 65:3	84:1 85:5	Laune 67:18,18	liking 18:19
44:18 48:12	86:14 91:18	86:23 91:12	law 75:6 112:6	limestone 66:9
101:7 107:17	92:9 93:8	92:7 95:4	141:19	77:10 78:2,9
107:20 108:4	94:10 110:16	107:16 111:20	laws 112:14	78:13
108:10,14	113:24 121:1	114:1,18 120:3	lawyer 142:18	limit 23:21
136:8	134:13 148:23	120:4,4 121:3	layout 4:4	90:19 106:2
Jim 67:3 80:8,9	150:8 152:3	128:18,19,20	113:20,22,24	107:23 108:2
86:25 91:17	154:13	129:5,6,7,12	121:19 126:18	113:4 118:3
106:9,15	kinds 118:16	133:1,8,18,18	lays 20:16	143:24
128:11	KK 100:22	136:21,24	32:22	limitations
job 29:10 117:8	Kleindenst	140:12 141:14	lead 85:21	133:2
117:19 120:24	131:5,12,18,19	142:17 146:22	learned 17:4	limited 64:13
128:13	132:14	147:4 148:17	leave 98:6,14	87:18,21 92:21
jobs 129:14,15	knew 106:15	148:22,25	leaves 65:10	110:23 111:10
John 2:6 10:12	Knob 32:1,2	150:1 155:1,2	left 141:3	122:14
14:25 15:21	70:9 72:9	159:13	leg 152:21	limiting 140:5
16:9 17:22,25	76:12 81:21	known 43:8	legacy 52:25	143:4
20:6 37:3	82:5,13	55:19	legal 5:11 86:19	limits 45:7 108:1
39:13 48:22	knocked 129:1	knows 129:10	86:20 104:22	112:15 124:13
60:21 67:21	know 16:25 17:7	137:2	106:25 110:14	143:19,20
70:23 77:3	18:14 20:1	Kurt 110:4,5,8	112:21 118:10	line 138:19
John's 52:22	22:5,7,8 26:13	116:3 119:11,16	legislators	146:2
Johns 41:13	28:3 29:11	120:23 121:14	134:14	list 145:18
joined 6:7	30:15,20 31:14	129:2 138:2	lessen 104:18	listed 9:13 17:6
judge 13:22	31:16,16 32:12	142:10 144:2	letter 3:25 11:19	59:10 99:11
Judith 132:22	33:9 34:5 35:1	146:21 156:14	14:6 34:23	listen 50:17
JULIE 61:14	37:4,5 39:6	Kurt's 151:13	62:20 101:8	literal 133:23
July 61:16	40:1,11 41:13	L	102:24 104:8	literally 47:14
Justin 5:5 6:8	42:6,10 45:14	L 2:5	104:12 107:11	90:23
8:3 92:10	45:18 47:9,10	laid 26:5 108:8	109:3 114:20	Litigation 1:20
96:20 150:6	47:12,13,16	lake 55:14	118:24,25	5:13
160:3	48:1,1,6,9,11	145:14	137:17 156:19	little 6:13 14:23
jut 10:24	49:5,11,17,19	land 9:1 11:10	156:23 157:5	21:20 22:9
K	49:20 50:6,8	12:12,15 21:5,9	157:19	26:12 37:4
keep 28:9	50:8,9,13,14	73:2 98:23	level 22:19	38:7,24 40:23
53:13 63:15	50:16 51:14,17	101:18,18	45:16 72:13	43:13 44:17
109:3 147:5	52:1 53:16	117:19 133:14	74:7 76:15	46:9 47:11
	54:4,22,25		87:24	56:24 58:22

PUBLIC HEARING 2/25/2020

61:15 74:13,13 76:16,17 77:1 81:14 102:3,3 113:25 147:21 150:3,5 live 15:22 23:23 34:8 38:4 43:14 44:9 47:12 49:12 52:1,18 53:25 58:5 61:16 62:6,7,12,13 62:15 63:2,14 64:23 66:2 67:23 71:20 98:4 120:22 123:1 lived 16:1 34:8 38:10,11 50:13 62:3 lives 72:18 living 85:25 Lloyd 131:5,18 load 24:4,6,7 45:10 loaded 84:10,12 89:1 90:5,5 loads 50:24,24 55:5,9,10 59:5 81:17 local 51:18 locals 31:15 located 10:21 11:2 12:19 23:14,15 24:2 28:1,25 29:23 30:1 100:21 location 12:22 18:3,4 20:11 23:13,15,19 24:3,16 25:1 25:13 26:4,8 27:10,11,17 28:21 29:4 36:23 38:16 39:1 67:5 83:12 84:25	85:1 locations 20:18 20:19 27:13 30:22 32:18 63:2 83:20 LOCUST 1:4 logic 66:23 90:15 logical 91:1 logically 75:1 long 18:14 42:10 49:15 55:13,15 56:19 62:3,6 81:6 102:3 113:3 123:15 138:24 139:2 141:7 148:25 149:21 150:2 long-rage 36:18 long-range 36:15 look 25:9 51:10 60:3 75:14 77:2 95:6,10 112:10 121:12 123:16 137:17 141:7 144:16 151:14 152:15 looked 8:14 16:20 49:8,13 80:23 90:1 105:5 looking 15:3 47:20,25 58:12 62:6 89:8 125:21 127:14 133:4 144:3 152:20 looks 103:6 lot 7:1,2 28:19 50:7 51:21 74:4 75:5 82:6 92:16 123:7 133:1 148:19 LOUIS 5:16 low-density	11:10 101:18 low-water 30:25 31:1,8 36:21 56:18 71:11 79:14 lower 107:23 108:2 Lucas 130:2,3 130:23 Lyon 10:23 100:23 <hr/> M <hr/> ma'am 65:12 mad 73:18 magical 143:6 main 93:13 121:20 123:2 125:21 maintain 72:9 72:12 83:7 maintained 37:9,14,15,16 37:17 77:22 82:2,21 90:19 101:20 maintaining 87:12 maintains 88:4 maintenance 44:17 57:12 major 14:11 31:6 53:15 55:2 56:15 62:17 86:1 majority 24:13 majorly 94:4 making 136:17 148:20 manager 20:8 map 3:6,19 9:4 20:12 29:23 39:3 99:2 maps 89:8 mark 20:1,19 31:9 105:9,19 106:1 107:14,21	108:16,20 140:1 150:9,12 Mark's 106:5 107:16 marked 9:8 14:7 18:19,24 19:14 20:25 42:17 42:25 99:7 113:15,19 115:2 123:17 market 35:8 40:7 Marking 152:19 married 62:5 126:22 marshal 111:5 114:5 118:1 136:19 138:11 138:18 marshals 138:15 mass 141:24 Master 3:7,20 9:4 99:2 material 10:19 16:20 85:3 91:20 106:13 106:16 materials 7:14 10:17 11:5,20 69:24 102:19 math 26:11 90:23 matter 7:12,14 8:21 14:14,16 73:21 98:3,13 100:8 111:2 127:1 138:25 150:14,15,16 160:14 matters 15:4 17:3 73:22 98:7 139:12 maximum 101:2 101:5 105:6,12 106:1,21 114:22 Mayberry 1:19	5:14 162:2,15 mean 16:12 42:7 44:9 45:3,4,8 45:9 46:24 47:14 51:9 54:10 63:7,21 65:5 94:23 118:22 119:25 126:11 135:2,13 139:4 142:16 143:11 144:20 146:18 147:12 147:13 151:16 151:17 157:2,3 meant 106:17 measure 26:5,7 123:13 measurements 123:12 measures 129:7 mechanism 111:23 115:14 117:17 122:21 140:7 meet 27:12,14 28:11 41:21 48:13 51:2,12 51:13 90:24 94:21 105:21 111:1 137:15 142:21 meeting 6:5,9 19:9 30:3 47:5 50:22 51:19 58:8 59:4,22 105:8 106:3,11 106:15,24 108:15,20 152:7 157:16 meets 12:3,22 151:5 memory 109:11 mention 49:25 58:8 59:20 mentioned 37:7 49:7 52:19 59:5,17 62:20
--	---	---	---	--

PUBLIC HEARING 2/25/2020

71:4 85:21 139:9 mess 56:22 met 104:13 106:8 108:15 109:4 150:25 152:15 Michael 132:21 132:22 mid 103:20 middle 24:11 51:13 55:20,21 57:2 150:9 mile 15:23 23:21 26:8 28:1 32:3 44:11 49:12 51:11 68:11 78:15,17 79:10 82:14,16 129:9 miles 18:3 32:6 38:17,19 39:3 39:6,8,11 42:3 45:6 51:5 68:22 71:15 72:8 85:2 100:22 112:11 112:12 118:9 141:22 military 54:2 Miller 56:10,11 57:8,10,19,22 million 70:8 mimicking 133:16 mind 7:15 28:9 74:8 77:19 92:17 93:8 144:15 mind's 74:10 90:21 mine 49:6,18 50:16 136:4 minimum 27:3 27:23 40:12 86:9 mining 10:18	11:4 minor 76:18 minute 55:4 82:9 128:12 minutes 8:8,9 48:10 65:25 73:20 mirror-to-mirror 26:10 misdemeanor 111:13 137:2,3 missing 104:9 154:19 Missouri 1:5 5:16 20:7 36:5 112:12 127:2 162:4,16 mistaken 86:17 mitt 134:13 mixed 67:6 moaning 66:11 Modern 112:9 modification 95:18 modify 14:1,3 15:5,8,11 MODOT 32:4 41:18 77:21,22 84:22 MODOT's 53:8 moment 17:14 116:10 121:14 126:6 146:4 Monday 108:4 143:18 money 53:8 54:22 91:23 93:18 117:9 months 75:17 136:7 156:22 156:22,22 morals 35:18 morning 7:5 53:24 motion 15:10 95:17,19,25 96:7,13,17	97:3,7 153:2,4 153:24 155:7 155:17,21 157:9,14 158:9 158:10,19 159:2,8,9,11,16 159:20 motions 73:23 motor 44:19 move 7:3 19:24 21:3 26:1 28:6 46:8 62:11 69:3 73:23 75:12 86:7 91:20 113:11 119:5,6 142:21 144:1 146:1 154:1 155:9 160:23 moved 58:5 64:25 92:5 132:7 mud 63:10,11 muddy 64:11 multiple 56:14 146:1 Mundik 106:10 Municipal 112:3 myriad 139:16 <hr/> N N 2:1,5 5:1 6:1 Nam 54:7 name 9:19 15:19 17:25 20:6 43:5 45:11 46:4 56:10 65:24 76:7 80:9 99:17 110:8 130:2 131:16 132:21 name's 58:4 128:10 names 46:17 narrow 44:7,8 45:4 67:24 75:21 90:1,2	90:23 110:14 118:18 narrower 81:15 narrowness 71:12 narrows 28:2 nation 66:20 national 33:12 nature 133:14 near 53:7 63:3 67:1,5 83:17 90:17 nearby 133:10 nearly 51:5 62:3 117:4 neatly 90:18 necessarily 40:4 93:10 necessary 6:20 7:6 158:25 need 8:8,9 10:6 27:3 31:19 45:17 55:8,8,9 57:12 63:9,25 64:3 65:24 66:3 68:1 79:18 84:3 85:23 91:19,19 91:23 96:4,18 100:5 103:17 105:20 107:8 109:10 115:23 133:6 143:3 148:22,22 153:6 158:23 159:1,15 needed 66:14 94:21 95:4 106:20 needing 64:2 needs 41:20 42:5 87:7,8 91:18 137:23 neighbor 52:23 neighborhood 59:15 128:23 neighboring	19:11 neighbors 42:8 67:2 neither 131:7 never 49:3 53:3 59:11 86:20 149:24 new 14:6 37:22 38:16 45:7 56:11 57:19 66:2 67:4,5 70:3 71:5 72:6 85:13 110:20 113:9 nice 34:14 Nichole 5:10 98:19 104:2,7 104:11,15,19 106:3,8 107:2 107:7,10,14,18 108:15 110:19 Nichole's 156:1 night 53:19,21 53:22,24 54:8 55:22 143:14 148:25 nights 55:20 no-win 128:13 noise 50:9,11,15 143:19 noisier 149:9 non-recomme... 131:22 non-urban 10:19 11:2,8 44:10 131:25 normally 6:10 44:23 73:23 north 5:15 10:22 24:17 25:14 37:23,25 northeast 23:4 northwest 85:12 northwestern 85:14 Notary 162:3,16
---	---	---	--	--

PUBLIC HEARING 2/25/2020

<p>note 4:7 20:20 96:5 noted 77:3 158:22 notes 96:3 160:19 162:8 notice 22:6 25:2,10,13 74:13 123:18 now's 131:10 NUA 101:12,17 102:10 number 10:16 19:8 24:1 32:20 40:23 91:3 103:5 105:16 114:24 116:25 119:2 123:3 125:4,9 127:19,22 136:15 138:12 139:13 141:5 143:7 144:16 144:24 147:2 147:16,25 number's 59:8 numbers 33:16 33:18 35:7 142:24 143:2 numerous 44:11 44:13</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>O 6:1 o'clock 144:10 o8o 161:10 oath 115:21 objections 66:13 obligation 15:15 obligations 151:11 obstacle 68:14 obtaining 124:16 obvious 73:3 83:22 126:12</p>	<p>obviously 21:11 22:18 23:24 24:15 29:18 39:20 53:18 54:2 76:12 85:25 124:25 158:21 occasion 100:18 101:1,8,10,13 102:4,6,9,9,16 103:4,11,13,16 104:24 105:11 105:22 106:19 107:24 108:18 110:20,22 111:19 112:24 113:7 115:18,25 117:21 124:12 133:9 134:2 146:3 Occasional 134:5 occasionally 82:3 occasions 101:2 119:1 133:12 occupancy 101:5 105:6 108:19 110:22 111:4 114:6,6 114:23 115:8 119:1 120:1,5 121:1,3 122:17 124:21 125:21 127:16,19 133:5 135:5 136:16 137:22 138:11,13,21,22 139:7 141:3 146:20 148:3 153:13 154:23 156:24,25 occupants 103:6 138:19 occupiable 125:17 occur 13:11</p>	<p>occurrence 54:19 October 101:3 104:4 offer 7:11 17:14 69:13 70:20 70:20 71:2 95:16,17,19 113:12 offering 19:14 86:25 office 100:25 107:18 112:9 153:7 officer 104:5 109:12 official 9:4,4 99:2,2 103:11 109:2,13 111:25 officially 17:10 oh 43:7 124:6 145:4 157:6 okay 8:5,23 14:25 16:13,18 18:5 21:2 26:19,21 27:18 29:24 30:2,11 30:23 31:5,10 31:18 32:6 36:16,20 38:20 39:7,12 40:21 41:9,18 43:12,22 44:6 46:18 54:5,16 60:18,25 61:6 70:15,20 72:10 77:18,21 77:22,23 78:2 78:7,11 79:15 79:20 82:17 83:4 84:4 88:13 90:7 96:1 97:17 100:15 102:1 109:9,20 116:6 116:17 124:1,8</p>	<p>125:14,23 146:5 153:16 153:23 156:13 157:5 159:7 Oliver 100:16 130:7 OLIVER/333 2:15 3:16 once 22:1 34:15 38:19 70:23 71:17 88:21 102:23 103:2 103:9 108:17 111:1 ones 56:16 Onner 61:14,16 61:23 65:13 open 25:6,25 25:25 31:17 66:9,17 67:5 71:3 74:8 75:10 88:9 109:4 123:24 134:6,7 143:14 opened 9:14 99:12 132:1 openly 73:21 149:25 operated 66:25 67:7 operates 90:17 operation 15:24 25:17 31:21 40:4,10 operational 133:2 operations 49:14,14 opinion 35:23 41:10 59:19 106:6 107:16 109:13,16 opportunities 51:2 opportunity 44:4 70:23 73:11</p>	<p>opposed 11:23 40:4 68:25 91:23 opposite 64:21 opposition 2:10 2:12,19 3:10 13:24 40:3 45:25 52:11 56:6 57:25 61:11 65:16 69:1,2 128:18 131:3 132:17 135:24 option 106:23 options 107:5 108:8 149:22 oranges 141:24 order 2:3 6:6 14:1,3 33:15 36:13 121:12 134:1 139:17 originally 156:5 outcome 66:22 outdoor 114:23 119:17,22 outlets 25:24 outlines 110:16 outright 66:18 outside 68:22 outstanding 153:8 overall 123:15 overbearing 93:9 overcome 36:1 36:12 41:7 72:2 137:21 overly 155:14 overrule 157:10 overturn 39:21 115:16 153:12 159:21 overturning 152:7 155:24 Owensville 38:22 owner 11:18,19</p>
---	---	--	---	---

PUBLIC HEARING 2/25/2020

owners 19:11 133:11 owns 88:3	15:25 16:17 17:1,11 18:20 19:14 20:25 21:22,22 25:15 46:14 68:20 85:14 92:2 123:8 132:6 157:24 158:4,6	62:13 73:18 penalties 53:18 137:2 people 6:11,12 7:1,2 21:18 24:13 31:22 35:2 36:23 45:1 46:16,24 46:25 47:4 49:20 50:6 51:21 52:21 54:4,23,24 55:1,1,19,23 58:11 62:4,9 64:17 71:13 72:19 74:3 85:23,25 91:14,18 94:3 94:9,12 98:4 101:2 102:11,13 105:12 106:1 106:22 111:3,4 111:5,18 112:1 112:19 114:25 117:1 118:2,13 120:1,3 121:5 121:24 122:2,3 122:6,12,14,15 122:17,22,24 123:3 124:21 126:14,18,20 126:21 127:8 129:4,5 130:15 130:16 132:7 132:17 134:13 134:25 135:1 135:13 136:18 137:7 138:14 139:2,15 140:9 140:11 141:15 142:1 143:2 145:3,6 146:25 147:2 147:13,13,17,19 148:14,19 149:8,8,19 150:2 151:15	151:16 152:17 perceive 53:23 percent 49:8,10 perfect 64:19 perfectly 112:8 period 13:9 92:22,25 permanent 91:13 permit 10:16 11:6 11:20 12:8 21:24 22:12 39:25 45:25 50:9 65:19 67:14 69:10,12 91:3 92:24 94:17,18 95:20 96:1,10 96:12 97:8,22 100:9,19 101:1 101:4,9,11,15 102:6,14 103:1 103:3,4,4,7,9 103:11,13,16 104:5,17,24 104:25 105:5 105:12,22 106:13,17,20 107:24 108:1 108:18 109:24 110:25 111:12 111:16,16,19 112:6,19,24 113:7 114:12,14 114:14,22 115:1 115:8,18,25 117:21 118:12 118:16 119:8 124:12 126:15 127:10 133:9 134:2,5,8 136:2 137:6,11 137:15,18,22 139:24 140:1 140:15 141:12 142:22 143:24 145:17 146:3	148:17,22 149:23 151:4 153:20 154:2 154:15 156:11 157:2,7 permits 12:24 21:23 101:13 102:9,9 110:13 110:20,22 140:20 permitted 102:10 117:1 permitting 116:13 person 14:16,17 14:17 46:16 65:5 68:8 69:12 75:3 105:17 117:3 121:25 122:23 125:5,11 personal 90:15 90:16 130:6 perspectives 154:9 pertaining 102:8 petition 3:12 19:2,5,16,17 46:25 59:21 59:24,25 80:22 85:24 petitioner 80:22 petitioners 19:6 ph 52:23 66:9 105:10,15 106:9,11 107:10 108:16 131:5,12,18,19 132:14 phone 104:11 107:3 photo 20:11,19 23:18,18 24:1 24:3,19,19 26:6 27:10,16
P				
P 2:5 3:25 5:1,1 6:1 152:7 157:23 P.M 1:11 98:10,11 161:9 packet 7:9,9 8:12 17:2 18:9 18:12 22:4,5 46:14,20 47:17 61:24 63:20 72:17 73:12,14 73:15 74:7 75:6 77:7,12 77:14 108:9,11 113:18 114:19 121:11 124:5 136:23 140:19 149:20 packets 107:13 107:21 page 2:2 3:2 4:3 16:21,24 155:23 pages 47:2 paid 33:22 68:19 panel 31:7 paragraph 110:18 paramount 71:22 parcel 10:24 park 145:8 147:1 147:1,13,13 parking 144:4 144:21,23 145:2,15,18,20 146:5,5,7,14 146:18 147:12 147:16,17,18 148:6 150:16 part 8:16 14:12	particular 54:6 74:21 83:12 160:18 PARTIES 4:8 pass 26:23 28:4,7,13,19 73:4 passed 58:11 102:8 passenger 28:4 60:7 passing 87:7 path 66:10 68:9 Patsy 1:19 5:14 162:2,15 patterns 133:13 pave 27:22 82:5 83:7,15 83:17 paved 34:11 59:25 60:16 60:17,19 75:2 76:11,13,14,21 76:23 83:3 90:18 pavement 32:8 32:13,17,24 33:6 40:25 41:20 paving 33:12 pay 36:8 41:11 120:8 122:9 122:20 126:22 127:23 128:16 156:9 paying 75:18 pays 41:17 peace 17:7			

PUBLIC HEARING 2/25/2020

27:16 30:1 32:9 photographer 62:1 photographic 74:16 photos 20:13 20:20 23:3,10 28:5,16 29:3 29:6,24 31:6 31:25 74:25 81:24 physical 122:17 physically 122:16 127:18 pick 6:23 61:20 92:18,19 pickup 23:11 24:23 28:17 picture 23:2,12 26:7,7 27:8,16 27:25 29:14 31:9 63:20 76:24 89:22 pictures 28:18 32:6 60:21 61:24 63:7 64:8 83:24 89:14,16 piecemeal 156:18 Pillar 35:12 Piontek 105:9 105:19 106:1 107:14,21 108:16,20 111:14,21 place 9:2 13:3 47:24 62:7,13 64:19,22 98:25 126:24 129:9 162:6 places 81:13,14 81:14 Plack 105:10,15 106:9 107:10 108:16	plan 3:7,20 9:5 36:16,19 61:18 72:12 83:19 84:18 99:3 102:18,18 103:5,18 104:10 105:21 105:21 106:21 114:10 126:10 144:3,17 145:10,25 158:5,5 planned 80:13 113:24 115:9 Planner 5:10 104:2 planning 1:1 3:5 3:18 5:8,9 10:15 11:22 12:10,14,14 13:15,21 15:11 19:4,7,17 21:23 22:16 33:2 64:16 100:18 101:3,7 102:19 102:20,24 103:3,7,10,20 103:22 104:18 109:21 110:11 111:15,24 115:16,23 117:7 118:11 131:21 131:22 137:18 plans 66:8 80:12 83:14 105:4 111:18 124:4 plant 55:8,9 planting 81:7 plat 77:2 play 38:7 player 109:10 plays 35:2 please 21:1 43:6 43:23 85:9 153:5 plus 26:11	113:23 132:2 pockets 36:10 point 17:24 31:20 51:25 59:3 61:21 68:24 72:10 73:10 83:14 84:24 85:6 91:8,17 92:4 93:24 94:3 104:16,19 112:22 117:25 127:7 135:2 138:17 139:4 139:23 145:10 151:13 153:8 156:5 pointe 136:17 points 156:6 police 149:15 151:25 pollution 62:14 porch 47:14,21 portion 85:12 90:25 101:24 123:21 portions 90:22 position 13:22 107:22 110:16 possibilities 104:15 possibility 105:24 possible 7:4 58:22 post 84:9 105:25 106:23 posted 23:21 25:12 84:14 posting 29:10 84:15 posttraumatic 54:5 55:17 potential 25:23 55:3 power 17:24 58:22	prepares 103:3 present 6:16 7:22,25 8:2 21:15 43:20 44:4 presentation 2:9,10,11,18,19 3:11 17:24 18:6 20:21 67:22 74:13 PRESENTATI... 2:17 presented 13:2 51:24 58:10 75:15 77:15 78:6 95:8 155:10 preset 143:22 pretenses 59:1 pretty 16:21,23 27:17 74:1 75:21 92:20 110:10 133:2 prevents 135:6 previous 86:19 131:23 133:17 previously 101:12,17 131:25 162:6 primary 21:19 22:10 23:5,16 30:21 36:19 print 9:19 99:17 prior 8:8 91:12 133:17 probably 25:20 40:18 54:25 55:6 84:1,14 87:16 89:16 122:4 124:18 129:14 148:18 149:10,12 problem 57:3 86:2,5,23 126:24 127:11 150:18 procedures 2:8	2:16 8:20 98:18 proceed 10:3 20:3 21:1 22:13 43:24 44:5 46:7,22 100:1 proceeding 2:2 140:4,5 162:4 proceedings 22:13 98:11 118:23 161:8 162:7,11 process 102:15 103:19 152:6 processing 104:3 produced 141:25 products 70:8 professional 20:6,8 62:1 162:2 profit 55:3 profitable 45:7 programs 84:22 progresses 29:25 32:25 progression 32:13 progressive 69:2 prohibit 124:16 project 53:15 66:10 107:3 108:6,6 projects 53:20 promise 24:23 110:13 promote 21:14 88:1 proof 87:6 properly 13:8 properties 11:7 11:11 76:4,5 property 10:21
--	---	--	--	--

PUBLIC HEARING 2/25/2020

11:2,13,19 13:4 19:11 34:9,17 47:15,16,18,19 47:21 49:5,10 52:24 55:2 72:14 75:5,6 100:21 101:10 101:12,17,19 120:22 129:8 129:12 130:3,4 130:5,5 133:10 146:2 proposed 11:7,9 11:14,15 12:19 12:20 15:22 26:4 43:15 77:14 84:2,25 101:16 132:24 133:15 proposition 133:3 prosperity 21:14 protecting 133:10 Protection 14:7 provide 21:12 30:12 35:19 129:13,14 158:13 provided 9:20 19:2 41:1 99:18 providing 36:1 public 1:9 9:18 10:1 22:2 23:7 25:7 31:17 35:17 41:5 45:15 71:3 93:5,15 94:16 95:6 99:16,25 134:7 162:3,16 pull 17:23 48:15 49:2 64:13 145:10 pulled 48:23 pulling 54:17 Punched 30:11 purchased 62:8	purpose 133:10 133:18 134:20 purposes 93:10 114:5,6 pursued 149:24 pushed 24:10 put 8:12 33:5,19 35:8 36:5 44:15 50:11 55:8 59:1 62:20 63:19 67:21 83:8 86:21 94:21 95:13 118:1 119:25 121:23 135:4 136:22 138:15 142:23 142:24,24,25 143:8 puts 92:2 114:2 putting 31:13 141:25 <hr/> Q <hr/> qualified 144:5 quality 50:5 62:18 64:24 132:5,6 quarrel 159:12 quarries 38:22 54:23 70:4,6 74:19 76:13 94:19 quarry 10:25 11:14 12:19,20 15:22 16:7 23:6,8,14,15 25:16,21 26:4 27:1 28:1,2 29:5,8 30:9 30:15 31:17,21 31:25 38:23 40:4,9 43:15 43:16 45:2 47:4,13,19,20 47:25 48:2,6 49:9,14 50:20	50:25,25 55:7,14 57:5,11 59:8 62:16 64:2,19,22 66:3,9,17,25 67:5 68:13 70:2 71:14,23 72:20 74:19 74:23 75:19 76:11 78:3,4 80:13,15 81:17 81:22 82:11,13 83:13 84:2,12 84:25 85:2,12 85:13,14 86:7 86:12 88:2,9 88:11,20 90:16 90:17,24 92:18 95:3,4 quarrying 10:18 11:4 quarter 15:23 26:8 28:1 question 29:12 39:20 40:10 86:14 92:4 114:25 116:22 117:7 120:22 121:14 124:18 126:12 127:14 131:6 139:11 142:11 144:6 146:20,22,24 147:4,5 152:3 154:8,12 questioning 108:11 questions 9:16 14:11 37:1 39:16 42:13 43:17,20 45:21 52:5 56:1 57:16 59:3 61:7 65:10 67:10 69:5 88:6 89:6 90:9	92:16 99:14 99:24 107:4 116:4 120:13,15 123:9 125:25 128:1 129:20 130:19 132:11 134:11 135:17 135:19 142:9 149:1 quick 33:5 quickly 7:3 29:8 quiet 62:14 quite 25:7 50:8 52:25 55:13 71:6 87:4 129:12 quorum 8:6 <hr/> R <hr/> R 1:19 2:5 3:3 5:1,14 6:1 43:7 43:12,22,25 44:6 102:10 R2 25:11,19 33:21 39:9 62:22 radius 49:12 rail 73:18 railroad 17:5 raise 68:23 rambled 65:7 ran 33:17 Randall 3:14 43:3,7 Randle 2:6 10:12 Randy 43:8 48:10 ranges 28:11 rare 110:10 Rarely 73:21 rate 24:6 rattled 61:15 re-enforcing 107:22 re-rock 81:5 reaching 133:8	read 8:8,19 9:15 51:5 64:17 97:3 98:18 99:13 100:12 101:25 109:22 110:24 118:24 118:25 120:7 122:13 124:7 139:10 143:20 reading 150:14 150:23 ready 19:24 123:22 154:10 real 61:16 realist 53:1 really 17:6 21:19 27:19 28:18 29:15 40:8 48:5 58:14 61:5,21 62:16 76:9,24 79:10 84:19 92:20 93:2,14,20 94:2 121:16 130:14 133:6,7 133:7 134:2 154:3 reason 7:10 26:19 28:13 34:4 72:16,17 94:16 110:21 130:14 137:18 156:12 reasonable 34:17 reasons 62:12 62:15 160:7 rebar 31:9,13 63:16 84:16 rebuild 95:13 rebuttal 2:12,20 69:13 70:21 136:3 recall 30:4 112:2 receive 7:13 14:6 22:3 136:24 140:8
--	---	--	--	---

PUBLIC HEARING 2/25/2020

received 7:10 11:21 16:20,25 17:12 46:14 100:25 101:4 103:21 104:1,5 104:11 107:2,11 107:20 108:10 154:25	75:4 96:13 116:23 regarding 22:7 130:11 Regardless 80:14 regards 106:19 registered 20:6 regulations 3:5 3:18 9:1,3 12:6 12:12,15 21:6 21:10 22:22 27:22 33:10 73:3 98:24 99:1 102:4,8 105:22 108:12 117:20 159:11 regulatory 28:25 43:15 regurgitated 20:14 related 112:25 relation 68:10 Relatively 79:13 remote 64:18 removed 6:19 6:24 repair 33:1 71:18 81:20 82:4,7 89:11 repaired 33:4 94:23 repairs 44:20 repaving 53:16 repeat 73:11 repeated 43:14 replace 71:18 89:1 replacing 88:25 reply 108:10 report 9:14 15:6 18:11 20:14 22:8 26:13 29:16 84:8,8 98:16 99:12 100:12 119:12 reported 1:18	21:17 Reporter 2:24 162:1,3,15 reporter's 18:19 19:13 represent 110:9 represents 162:10 request 33:8 107:15,16 109:17 requested 19:9 103:22 requesting 107:12 108:25 require 11:5 12:23 33:14 95:18 101:15 102:13 147:17 155:2 required 21:7 41:24,25 42:1 68:21 102:18 103:18 119:21 150:23 153:10 155:20 159:10 requirement 14:2 104:13 105:17 111:1 142:22 154:14 157:23 requirements 12:4,23 28:12 111:10 119:8,24 137:15 142:21 144:21 145:2 requires 115:1 requiring 148:5 reserve 143:8 reside 17:25 18:2 resided 66:1 residence 130:3 residences 133:11 residential 11:11 101:18 132:2	residents 19:11 45:13 51:18 52:1 RESIDENTS' 3:12 resolved 116:15 respect 54:16 54:25 111:13,21 respectfully 115:15 response 106:4 responsibility 41:7 responsible 35:25 rest 50:17 53:11 79:21 103:24 104:2 restate 85:9 135:9,9 restrict 93:11 restrictions 24:7 71:11 result 80:21 results 131:19 RETAINED 4:7 retire 129:15 retired 130:13 revenue 34:1 129:16 reversal 97:9,18 reverse 14:1,3 15:11 96:7,8,11 97:7 137:24 reversed 160:10 reversing 96:4 96:23,25 review 8:9,10 16:23 105:4 reviewed 16:23 17:1 41:20 73:12 104:7 149:20 reviewing 156:5 reviews 73:16 102:20 revise 105:20	revised 154:24 revisions 146:1 revoke 137:6 141:12 rezoning 136:8 riding 28:20 right 14:24 20:4 21:9 24:2,22 25:13 29:4,4 30:2 31:8 35:10,24 44:18 48:2,8,9 48:22 60:24 63:15 64:24 65:13 77:25 78:10,10 82:18 85:11,25 89:4 93:17 98:21 118:1,15 119:4 124:21 126:4 132:23 134:21 135:14,15 138:13 142:8 143:8 145:15 150:19 156:10 158:17 right-hand 24:18 right-of-way 11:16 101:20 risen 34:10 rises 29:7 risk 29:2 River 38:25 76:11 road 10:22,22 10:23 11:16,16 12:3 15:22 18:1 23:3,15,20 25:3,3,14,24 26:1,2,3,6,9 26:19,25 27:9 27:18,20 28:2 28:9 29:12,13 29:14 31:3,8 32:1,2,3 33:6 33:8,14,21
--	--	--	---	---

PUBLIC HEARING 2/25/2020

34:9,11,15 37:8 37:12,14,15,15 39:10 40:11,13 40:16 41:13 42:1 43:8 44:2 44:8,9,12,12 44:16,19,25 45:4 47:5,6 48:7,14,16,17 48:18,19,22 48:23,23,24 48:25 49:4 50:1 51:3,4,7 51:10,11,12,17 51:20 52:18 53:13,16,23 56:14,15,22 56:25 57:2,6 58:5,11,12 59:12,25 60:13,19,23 61:17 62:22 62:25 63:8,19 63:24 64:5,8 65:3,3,4 66:9 67:1 68:5,11 70:9,9,10,10 71:12 72:5,6,9 73:4 74:23,24 75:16,17 76:11 76:13,14,15,15 76:16,16,17,18 77:14,23,24 77:24 78:1,2,2 78:7,9,10,19 78:23 79:23 80:13,15,16,17 81:11,12,13,19 81:21 83:3,3,6 83:7,17 86:8 86:10,10,12 87:12,18,19 88:10,12,14,24 89:9 91:8 92:5,16 93:4 94:20,25 95:8,13	100:22 101:19 101:20 118:18 120:22 132:25 148:17 road's 44:7 152:18 roads 14:11 26:21 29:22 36:20 37:7,8 37:20 40:6 41:4 44:8 45:14 48:12 49:25 51:22 59:17 60:5,13 67:24,24 68:19 70:12 71:9 74:11,15 74:17 75:2,2 75:21,22 76:9 76:10,20,21 76:22,23 77:3 77:9,9 83:12 83:14,15,19 85:22 86:22 88:4,20 89:9 90:22,24 93:9,11 94:4 95:2 roadway 22:7 68:22 87:25 88:3 89:18,21 90:3 roadways 33:22 34:7 75:1 rock 25:22 38:14,15,18,23 38:24,25 40:5,6 45:10 59:13 68:8 71:5,6,7,7,8 77:9,10 78:2 78:10,13 80:16 80:16 81:18,22 85:16 86:9,10 87:8,19 91:18 91:19 92:3,5	95:6 rode 31:11 roll 2:4 7:17 Ron 30:3 room 9:22 74:22 99:20 101:6 114:24 123:22 145:13 rooms 124:22 rounds 121:20 route 20:17 23:5,12,16 25:5 28:10 30:17,21 31:5 32:5 41:25 72:3 78:5,9 94:7 105:2 routes 20:18 23:9 77:16 routinely 91:14 Roy 36:7 rule 128:13 rules 12:6 27:22 ruling 96:12 148:18 rulings 91:12 run 53:22 105:23 running 31:14 53:23 55:10 runoff 48:2,7 rural 53:25 62:13 64:18 64:23 131:25 132:2 ruralness 133:19 rusty 160:19	safety 21:14,16 21:19 22:2,10 29:18 35:18 36:12,19,20 36:20,22 40:8 41:6 42:7 45:1,15 47:5 49:25 62:17 65:1 71:22 72:2 73:2 83:23 85:21 85:24 88:18 91:23 93:5,15 94:16 95:6 121:4 122:5 132:5 133:25 135:3 143:3 152:15,16 sales 33:24 sample 121:12 121:19 sand 10:18 11:4 44:21 sandy 90:3 sat 73:12 satellite 32:23 satisfied 137:20 saturated 29:7 Saturday 143:18 save 85:18 91:23 saves 85:3 saw 72:17 80:23 142:15 saying 35:14 61:18 85:10 86:2,4 92:1,1 118:8 129:4 135:5 141:18 154:19 says 26:21 31:1 54:14 113:8 114:1 115:7 117:13,20,24 120:6 122:13 127:16 138:18 138:23 139:22	151:21 157:5 scale 39:3 scales 127:3 scares 142:14 scenario 40:24 54:17 152:4 school 20:18 25:11,11,12,15 25:20,24 33:21 38:12 39:9 41:12,13 41:17 45:3 62:21,23,24 68:10,12 83:9 school's 25:25 schooled 140:13 Schriewer 5:6 6:8 7:20,21 39:19 85:20 86:13 87:2,10 87:15 93:7 96:2 97:11,12 124:17,24 125:12,15,23 145:17,22 146:11 151:1 152:2,9 154:7 154:18 155:8 155:13 157:13 157:22 158:11 158:20 159:25 161:4 Scottie 5:9 15:3 19:23 20:23 86:16 96:18 101:23 110:19 114:21 122:20 145:1 156:11 160:18 Scottie's 153:12 156:1,14,17 159:21 160:9 screen 25:9 Seals 52:12,17 52:17,21 seat 23:11 24:22 98:14
--	---	--	---	--

S

S 2:5 3:1 4:1 5:1
6:1
safe 64:21
126:23
safeguards
134:21
safely 91:20
92:5 121:5

PUBLIC HEARING 2/25/2020

122:22 142:1 seating 142:4 seats 6:17 second 1:3 17:10 17:23 21:22 22:20 56:1 95:18,22,25 96:1,14,15,17 96:17 98:3 123:21 148:8 155:12,17,18 159:4,8,16 160:23,24 secondary 20:17 23:8 29:21 41:4 78:5 section 13:1,7,11 13:14 21:8,23 22:11 92:25 92:25 110:17 112:23 114:17 120:6 150:14 150:24 151:24 157:25 158:22 sections 41:2 security 6:18 132:6 sediment 20:9 29:1 see 21:17 23:19 23:22 24:8,10 24:18,20,24 26:5 27:12 29:15,16 30:13 30:25 32:7,10 32:24 34:18 35:6 41:15 44:14 49:18 51:25 68:9 76:23 95:7 121:19,22,25 123:12 124:7 124:15 126:17 126:24 129:7 134:15,17 159:15	seeing 23:25 65:18 69:12 131:2 136:2 145:13 151:22 seek 84:7 seen 29:19 53:20 63:6 109:12 sell 122:8 123:5 141:21 sense 23:10 36:24 45:10 123:7 sent 64:7 80:25 103:8 107:14 108:4 sentence 93:2 sentiment 39:21 40:2 separate 19:4,5 19:16,19 separately 8:21 September 100:24 103:20 104:1 serious 57:11 65:6 served 40:7 serves 57:20 service 16:2 services 1:20 5:13 85:2 90:3 session 25:20 set 12:6 105:8 162:12 setback 104:13 setbacks 104:18 106:12 seven 33:1 45:6 severely 62:18 Shaking 140:17 sharp 24:21 Sharpe 65:23 65:24 sheepish 54:13 sheet 9:19	99:17 shirt 35:11 shooting 47:13 short 32:21 38:12 98:2 shortened 119:12 shorter 85:17 shortly 150:3 shoulder 48:15 48:24,25 64:10 126:20 126:20 shoulder-to-s... 122:10 shoulders 64:9 64:10 show 20:12 33:13 83:25 121:12 showed 32:15 81:25 89:22 105:19 145:18 showing 84:16 89:8 113:20 shown 41:1 81:24 87:6 89:14,21 shows 24:12 29:15 32:12 33:24 81:19 83:10 side 10:22 54:8 56:24 94:13 side-by-side 122:4 sides 7:8 64:10 66:5 sight 23:19 24:8 47:12,14 49:9 sign 6:15 14:18 42:22 46:1 52:13 56:7 58:1 65:20 67:15 69:20 80:5 106:16,17 110:3 115:19	128:7 131:4 132:18 136:21 137:9 140:6 sign-in 9:19 99:17 signal 36:5 41:12,15,16 68:20 signed 19:6,10 46:24 110:5 significant 74:15 90:25 149:21 significantly 22:1 35:17 93:5 94:1 signs 24:21,21 81:19 83:10 103:7 similar 77:21 81:21 83:2,2 87:5 93:8,14 104:21 simple 54:9 122:15 single 32:15 63:8 singular 153:22 sir 14:22 15:17 39:14 43:20 44:3 46:22 52:12 56:4 60:11 61:9 123:20 124:23 126:2,8 159:6 sit 18:17 112:4 site 11:7,9,14,15 27:3 80:22 101:16 102:18 103:5,18 104:10 105:21 106:5,21 133:13 145:10 145:25 158:5 158:5 159:10 sits 40:9 72:2 159:2 sitting 74:4	144:3 152:20 situation 157:4 six 33:14 40:21 45:6 50:10,11 89:16 sixty-seven 145:20 size 10:25 64:8 101:11 112:25 113:5 117:22 121:15 126:25 127:2 137:12 137:19 139:9 139:12 141:7 151:12 skip 8:16 sky 66:15 71:24 slab 30:1,2 31:11 39:10 44:22 56:18 63:15,16 78:7 84:6,21 89:10,13,15 slabs 30:16,23 30:24,25 31:20 41:3 44:21 71:11 77:17 78:7 79:14 84:6,18 sleep 55:22 small 55:14 63:1 113:19 119:21 small-scale 133:20 smaller 76:6 125:10 smart 55:1 119:5 snow 44:24 63:10 snows 44:23 45:2 snowy 81:4 soft 56:22 64:11 82:2 87:23 sole 135:11 solely 35:25 141:4 solution 36:1
---	--	--	---	---

PUBLIC HEARING 2/25/2020

<p>somebody 48:13 51:12 121:7,15 122:11 139:5 somewhat 7:8 24:13 76:8 98:6 son 16:3 49:15 126:21 soon 81:3 144:11 sooner 51:6 SOP 111:12,16 114:14 119:17 119:22 137:14 137:25 139:6 139:8 140:15 140:20 142:21 143:22 151:24 155:10,18,21 157:11 158:2 sorry 15:17 19:22 23:14 39:18 57:9 61:16 65:7 83:2 87:14 97:4 100:11,13 112:23 125:3 135:9 150:8 sort 17:4 82:12 84:21 90:15 93:18,25 109:1 134:24 153:7 sorts 85:24 south 10:23 12:21 26:4 30:10,22 37:23 38:1 66:1 71:14 78:6 79:4 100:22 130:5 southwest 44:11 space 4:4 101:6 104:6 105:7 106:24 114:23 114:24 121:6 121:22 122:12 123:6 125:17</p>	<p>127:22 147:17 spaces 105:14 124:20 144:4 145:18,20 146:5,7,8,9,9 146:14 147:18 150:16 speak 6:15 9:18 9:21 14:17 42:21 45:24 65:18 67:13 69:9,16 99:16 99:19 100:10 107:8 129:23 130:25 131:2 131:10 144:11 speaker 52:10 57:24 65:16 speakers 61:10 128:6 135:24 speaking 79:13 speaks 128:18 special 37:12 100:18,25 101:2,8,10,13 102:4,6,8,9,16 103:4,11,12,15 104:23 105:11 105:21 106:19 107:23 108:18 110:20,22,22 111:19 112:24 113:7 115:18,25 117:21 118:3 124:12 133:9,11 134:2,4 146:2 specific 25:17 121:13 143:16 specifically 40:10 119:1 120:25 specified 13:10 speed 23:21 90:19 112:15 speedometer 112:10 141:20 speel 50:1</p>	<p>spend 117:8 spent 62:6 spert's 53:4 spin 47:11 spoken 62:4 Springs 38:24 square 85:2 105:17 122:23 122:25 123:2 125:5,7,10 148:9 150:15 St 5:16 41:13 stabilize 81:5 staff 5:8 9:14,16 11:21 15:6 22:8 26:13 98:16 99:12,14 100:12 101:24 102:2,7 103:23 150:8 151:11 152:5 stage 116:13 stairwell 123:19 stand 74:4 87:20 111:6 122:3 126:20 152:21 158:9 158:18 standard 27:20 40:14 146:5,8 146:15 standing 29:14 29:17 54:8 122:10 standpoint 91:1 start 14:14 26:2 37:4 87:23 94:12 98:15 100:9 102:3 148:23 started 32:11 70:2,4 104:3 156:4 starts 34:15 93:14,23 94:2 state 12:1,18,25 13:13 20:7</p>	<p>28:12 51:5 74:24 82:18 82:22,25 90:14,18 112:11 124:11 135:9 157:15 162:3 162:16 stated 59:4 80:19 116:24 157:16 159:11 160:7 statement 16:17 74:21 85:9 101:23 statements 115:10 states 13:14 22:21 26:17 26:22 27:6 36:18,21 107:25 114:21 stating 105:12 statistics 70:25 stats 72:14 stay 14:24 67:25 staying 24:14 stenographic 162:8 step 14:17 16:15 46:1 58:1 61:11 67:14 69:18 109:24 131:4 132:18 158:2 Steve 5:7 6:8 7:18 67:18 92:15 97:1 130:2,3 132:22 159:17 Steven 67:18 94:14 96:1 sticking 31:10 63:16 stint 38:12 Stone 29:25 38:25 47:6 51:3,20 76:11</p>	<p>79:3,5 stop 17:5 20:23 73:18 82:9 94:6 128:20 stopped 24:23 24:23,24 133:8 stopping 32:8 stops 53:6 storage 124:20 125:16,16 straight 63:19 stream 12:20 12:22,22 street 1:4 5:15 32:10 132:23 streets 36:7 stress 32:17,24 55:17 strictly 116:19 116:20 119:3 137:12 138:23 141:3 stripe 25:10 strongly 63:2 structurally 40:17 structure 108:2 135:14 struggle 138:4 139:15 149:19 stuck 56:23,25 80:20,25 95:11 studies 49:7,13 study 41:15 stuff 43:14 49:24 67:21 70:12 subject 22:18 68:5 submit 10:6 19:7 61:23 100:5 102:17 103:2 141:5 submitted 7:9 9:9 18:25</p>
---	--	--	--	--

PUBLIC HEARING 2/25/2020

21:19,25 34:12 34:23 42:18 43:1 93:3 99:8 101:9 102:20 103:15 113:16 115:3 153:9 substandard 84:9 substantial 13:17 22:15,21 22:23 34:22 35:4,20 72:10 95:13 Substantially 89:13 successful 119:6 suck 56:25 57:2 sucked 136:10 sudden 94:9 suffering 54:4 suggest 86:6 suggestions 130:10 suite 123:22 summary 33:19 summertime 75:25 summoned 6:18 Sunday 143:19 Sunny 100:21 101:19 120:22 132:24 Sunshine 33:7 supervision 162:9 Supervisor 79:23 support 13:18 13:23 34:16 35:4,8,15,20 36:13 69:10 70:17 95:3 120:17 138:6,8 152:21 159:21 SUPPORTERS 2:11	SUPPORTING 3:13 supports 147:7 suppose 155:9 supposed 128:21 151:10 sure 16:15 35:1 35:2,3 36:6 41:21 48:4 49:4 53:8 68:12 74:20 86:9 91:24 109:4 119:13 126:18,21 128:20 136:14 144:15,18 153:24 158:21 surface 87:8 106:12,16 surrounded 101:17 surrounding 11:9 59:7 76:4 101:16 suspect 7:2 sustained 40:20 swear 162:5 sweats 55:20 sworn 6:16 9:20 14:18,21 17:21 42:22,24 46:1 46:3 52:14,16 56:7,9 58:1,3 61:11,13 65:20 65:22 67:15 67:17 69:22 80:5,7 99:18 110:3,7 120:20 128:7,9 130:1 131:4,15 132:18 132:20 syndrome 54:5 55:17 system 66:20 <hr/> T <hr/>	T 3:1 4:1 table 73:22 113:22 121:20 121:21 124:20 table/chair 125:16 tables 105:18 113:20,23 114:2 125:7 take 7:5,13 14:19 14:23 15:7,12 30:16,23,24 34:19 47:10 51:24 54:14,16 56:22 60:3 63:23 68:8 71:19 72:3 73:5,20 75:8 77:1 82:6 84:3 86:2 87:9,25 88:4 89:9 98:2,14 127:15 128:12 134:3 136:9 138:3 139:6 141:11 142:18 157:11 160:18 taken 23:3,13,18 24:3,22 26:6 26:7 27:10,17 29:3,6 34:6,19 68:2 98:9 102:23 154:13 162:5,7 takes 59:24 talk 92:14 107:18 110:12 110:13,15 138:22 talked 37:20 40:3 60:13 64:1,7,15 89:10 104:15 104:21 133:1 talking 44:21 48:20 50:15 57:7 70:1	78:23 81:10 93:15 94:5 128:22 141:24 tape 26:5,6 task 20:23 Tavern 76:16,17 tax 33:5,19,24 34:1,2,15 64:22 72:11 129:13 taxing 33:20 tear 59:17 technical 124:18 technicality 86:14 teeth 66:11 tell 7:11 16:21 46:10 61:25 97:5 118:4 122:24 130:14 139:25 141:8 143:11 144:12 144:21 telling 137:8 ten 33:24 111:3 117:10 ten-foot 121:20 ten-person 121:21 tend 18:14 tendering 18:20 tent 120:1 tenth 32:3 82:13,16 term 121:4,5 149:21 terms 76:3 78:15 121:9 126:5 132:4 149:21 terrible 60:6 testified 30:3 31:23 33:16,17 38:17 71:15 86:22 testify 19:21 40:14 111:9	testimony 13:1 18:21 20:23 21:18,19 23:17 23:17 34:12 35:11 40:18 71:5,23 73:9 74:12,18 80:18 118:18 133:17 thank 14:13 17:17 17:18 36:25 39:13,18 42:11 42:15,16 45:23 46:22 50:4 52:3,7 52:20 56:4 57:15,23 61:9 61:22 65:7,12 65:13 67:8,9 67:12 69:8 70:14,16 73:6 73:7 79:16 80:8 89:4 90:11,12 98:3 100:7 110:1,2 128:3,4 129:22 130:17 130:18,22 132:9,10,13,14 135:21,22 138:1 144:19 149:2,3 152:10 154:5 160:16 Thatcher 5:4 6:7 7:23,24 37:3,11,19,25 38:3,6,9,13,20 39:2,7,12 75:13 77:6,11 77:18 78:14,18 78:22 79:1,5,9 79:15 88:7,13 88:16,19 89:3 91:6,16,25 92:8 97:13,14 123:11 124:3,6 142:10,13 143:12 149:7,11
---	---	--	--	--

PUBLIC HEARING 2/25/2020

149:16 155:11 159:5 160:2 160:24 161:2 thaw 87:23 thawing 63:13 theme 25:3 theory 96:3 thickness 41:2 thing 33:9 34:24 36:14 44:16 45:18 54:1 58:7 59:2,14,20 64:14 96:3 122:3 123:23 137:16 139:13 141:22 153:15 156:2 things 7:15 21:4 21:10 22:25 28:15 32:14 33:3 34:3,21 35:13 36:11 40:19 42:9 47:17 52:18 53:14 55:24 56:15 58:8 62:19 64:17 66:16 67:20 68:17 69:25 71:19 72:15 73:13 74:5,8 84:24 94:23 98:5 120:23 121:10,18 124:20 129:2 139:16 152:14 152:15 154:19 156:25 157:4 158:23 think 8:11,17,20 15:6 16:16 19:8 22:3,23 23:21 27:20,21,23 27:24 28:17 30:3,3 31:19 31:19 34:16	38:17 40:2,14 41:3,19,22,23 41:24 42:1 53:24 58:24 58:25 59:13 62:20 63:23 64:20,21,22 75:25 76:4 86:4,16 88:17 90:17,20 93:1 93:2,17,23,24 98:15 109:11 110:9 112:5 115:12 119:23 120:4,23 123:5,16 129:11 132:4 133:2 134:1 139:11 141:8 144:24 147:11 150:13 151:9 151:12,19 152:14,14 153:14,25 156:16,17 157:9,12 158:16 159:1 thinking 51:1 thinks 45:6 third 17:11 51:11 76:15 140:15 thirty 46:16 thoroughfare 59:12 thought 56:20 140:18 thoughts 75:11 91:5 thousand 28:18 139:8 151:16 thousands 85:16 three 18:3 33:10 33:11,11 48:17 49:2 51:5 65:24 68:21 75:17 84:15	93:12 94:5 108:15 139:8 141:7 147:25 156:22 throw 148:16 thrown 150:9 Thursday 143:18 tie 76:22 137:12 tied 137:19 ties 112:24 113:10 115:8 137:10 tight 57:2 tight-knit 72:19 till 28:6 53:23 53:24 time 7:5 9:2 10:10 14:19 17:4,11,14 18:17 18:17 20:5 24:13 25:19 30:5 32:13,21 32:24 36:25 41:21 53:11 55:13,15,24 56:13,19 60:1 62:6 65:8,25 66:13 73:10 77:1 83:14,17 89:23 90:6 92:13 98:25 104:14 109:23 113:11 114:11,18 116:2,10 126:3 126:6,9 127:12 130:17,17 131:10 139:24 140:4 154:23 162:6 timeline 25:18 times 6:12 16:22 25:17 44:13 63:9 68:1,2 141:7 142:24 tiping 127:2 tirades 66:16	tire 71:18 tires 28:8 today 23:25 24:9 40:14 48:14 51:8,10 92:3 94:22 149:25 told 59:23 71:17 94:8 104:25 105:3 106:5 129:2,2 154:23 tomorrow 7:5 92:3 156:21 157:5 ton 16:20 84:15 tonight 6:7,20 32:16 47:10 48:5 59:22 74:2,12 76:23 80:4 91:17 95:8 110:15 111:9 117:18 119:14 130:14 131:24 142:15 144:10 153:21 Tonight's 8:24 98:22 tons 70:9 85:16 top 145:21 topic 93:25 151:2,3,9 topics 94:1 topography 25:4 topsoil 10:18 11:5 total 10:24 121:25 146:7 146:14 totally 136:20 touch 111:6 tough 63:8 93:6 Township 10:23 100:23 track 17:5	tractor 28:6 54:17,21 tracts 76:5,6 traffic 24:11 25:20 30:5 33:15,16 36:5 40:17 41:12,15 42:4 60:8 63:17,17,23 82:4,6 83:8 83:22 133:13 133:23 134:1 149:9 trailer 31:3 54:10,11,20 trailers 54:9 tranquility 62:14 133:19 transcribed 162:8 transcript 22:4 59:23 162:11 transportation 33:23 36:16 trash 83:9 travel 49:15 51:4 traveling 45:3 travels 62:22 traverses 77:25 treacherous 45:13 tried 68:24 74:1 139:25 truck 23:11 26:10 28:17 30:5 44:8 48:16 49:1 51:2,13,15 64:4 68:7 71:13,18 73:4 84:11,12 90:5 90:5,24 truckers 32:20 59:7 trucking 53:9 68:11
---	---	---	--	--

PUBLIC HEARING 2/25/2020

trucks 25:5 32:7 40:18 47:5 49:2 51:4 51:19 53:22 53:23 63:6 64:4 68:12 83:8,9,9 84:10 89:1 94:6 true 40:19 48:6 157:21 162:10 truly 71:21 72:12 truthful 130:10 try 7:3,7 31:4 46:8 51:25 61:14 75:8,11 81:1 82:6 122:2 145:10 146:1 trying 18:15 25:22 37:6 88:1,21 127:23 145:1,6 146:25 151:3,9 turn 6:22,25 9:21 16:8 29:9 31:2 39:22 99:19 139:6 turning 82:6 turns 24:18 TV 6:13,14 98:5 twenty 27:3 46:16 117:10 twice 116:25 117:4,4 139:19 two 6:11 22:14 28:4,13 29:21 30:21 31:6,20 33:10,11,11 44:21 47:8 49:1,1 62:8 70:8 73:4 79:13 84:6 94:24 118:17 121:9 124:10 136:15 139:7 140:20 154:8	156:22 two-laner 82:25 tying 138:11 type 28:15 33:15 35:13 36:11 42:8 65:5 typed 30:9 types 32:18 34:3 72:15 typical 26:10 typically 32:17 41:22 <hr/> U U 2:5 Uh-huh 38:8 57:22 88:16 89:19 96:9 ultimately 17:8 73:22 unable 33:2 114:22 undergo 117:3 underneath 54:11 95:12,14 understand 23:24 25:7 30:16,20 31:15 31:18 40:5 45:5 50:15 51:16 56:17 58:17,20,23 66:4 71:8,24 73:17 80:12 85:10 87:3 116:9 124:12 127:9 140:13 140:16 147:12 152:1 understanding 76:19,22 86:19 109:15 109:18 131:20 undeveloped 11:10 101:18	unexperienced 71:12 unfamiliarity 71:9 unfunded 72:9 Unified 12:12,15 21:5,9 73:2 117:19 unincorporated 21:13 Union 1:5 37:21 unknown 143:10 unreasonable 72:7 unsafe 133:12 Upchurch 5:3 6:3,4 8:1,2,7 8:13,17,23 10:9 14:13 15:1 15:13,19 16:10 16:14,19 17:17 17:19 18:8,15 19:12,20,23 20:2,22 39:15 42:12,20 43:5 43:10,19,23 44:3 45:20 46:6 47:1,7 48:19 50:4 52:4,9,13,20 55:25 57:6,9 57:15,20,23 58:15,18,21 60:9,12,15,18 60:22,25 61:2 61:6,22 65:9 65:15 67:9 69:5,17,20 70:15 73:7 79:20 80:3 81:10 82:8,17 82:21,24 83:4 83:11,18 84:4 84:17 88:5 89:5 90:8,13 91:11,22 92:6 92:10 94:14	95:15,24 96:8 96:11,16 97:15 97:16,20,24 98:1,19 100:7 100:13 109:6,9 109:20 110:2 116:3,8,17,22 120:14 125:24 126:4,11 127:25 128:5 128:15 129:19 130:19,24 131:9,16 132:10 132:16 134:10 135:18,23 136:11 138:2 139:14 141:13 141:23 142:6 144:9,18 149:2 149:5,10,13,18 150:11 152:11 152:24 153:5 153:14,17,25 155:4,16,25 156:8,13 158:1 158:8,16 159:3 159:7 160:6,11 160:22,25 161:6 uphold 155:9 urgency 148:15 use 9:1 10:16,25 11:6 12:12,15 19:3,6,18 21:6 21:10,22,25 22:11 26:14 28:14 30:10 33:25 34:20 35:16 36:22 39:25 40:21 41:4,10 55:10 56:21 64:12 65:19 67:14 68:5 69:10 71:7,7 72:25 73:2 81:17 82:7 83:8,9,9	84:10 85:16 87:18,21 88:24 91:2 92:21,24 93:4 95:20,25 96:10,12 97:8 97:21 98:23 101:15 102:14 104:17,24 110:13 114:12 114:14 115:1,25 117:20 118:16 119:8 121:17 125:6 126:15 127:10 133:14 133:15 134:8 137:11 139:18 139:24 140:1 142:22 143:24 148:17 149:23 151:4 153:20 uses 41:22 70:8 71:6 132:2 133:21 134:1 154:2 usually 14:15 73:17 usurp 153:18 utilize 27:12 31:22 71:5,14 utilized 13:9 31:20 utilizes 27:1 <hr/> V valid 66:14 value 47:22 49:10 129:12 values 34:9,17 47:15,16,18,19 49:5 72:15 75:5,7 129:8 variance 109:1 139:18 varies 101:21 various 20:13,18 21:18 22:18
---	---	---	--	---

PUBLIC HEARING 2/25/2020

23:8 vaulted 123:24 vehicle 31:15 vehicles 26:23 27:2 28:13 73:4 vehicular 146:14 venue 120:3 128:23 verbatim 151:5 verified 30:11 verify 24:5 145:25 version 113:19 versus 111:6 136:9 138:11 143:18 151:12 veteran 54:6 vets 54:2 55:16 Viet 54:7 view 32:10 52:1 vineyard 2:15 3:16 100:20 101:1 145:16 violate 137:1 141:10,19 violated 13:14 112:2 violates 13:1 violating 137:5 violation 84:13 139:17 violations 112:4 visiting 80:21 visual 20:24 voice 58:24 void 13:12 Voss 110:4,5,8 116:6,11,18 117:6 119:13,18 119:23 120:10 136:4,13 138:10 139:21 140:18,23 141:2,16 142:3 142:8,12,15 143:15 144:5	144:13 146:17 147:7,11 148:11 149:3 156:16 158:13 vote 2:14,22 14:4 15:3,5,7 15:12 22:17,17 59:22 60:4 73:24 96:19 96:22 97:8 155:23 159:22 voted 58:13,13 58:25 votes 159:16 voting 131:21 152:6 <hr/> W W 10:19 11:3,8 101:12,17 102:10 132:1 133:19,20 136:9 wailing 66:11 wait 28:6 waiting 103:24 wake 55:20 walk 72:24 77:19 Walmart 36:4,9 41:11 68:18 walnut 54:9,19 want 7:2 10:8 15:1 16:14 17:8 17:14 19:25 29:20 36:14 46:17,23,25 47:4 61:21 64:20 67:7 69:15 71:23 73:11 81:6,8 85:6 97:4 113:2 114:9 115:20 116:18 117:10 118:2,3 118:21 123:16 126:22 128:12	129:15 135:8 136:10,13,22 137:9,9 138:18 138:22 139:1,5 140:2,7 147:5 154:14 157:4 158:9,9,15,18 wanted 14:5 15:14,14 16:16 58:7,8,24 59:2,20 61:19 62:4,6,21 81:1 119:25 126:19 139:5 141:6 147:15 148:11 153:24 155:1 wanting 107:15 wants 45:9 47:24 159:12 warrant 42:6 warranted 41:15 41:16 Washington 36:5 41:11,12 41:16 53:6 wasn't 42:5 75:18 118:23 128:21 136:8 154:11 water 29:13,17 29:17 56:14 89:13,13,22 way 15:25 23:4 23:14 24:1 25:14 26:3 27:9,25 29:9 29:11 48:14 49:15 51:8,10 53:23 59:1 63:18 66:22 72:5,6 73:18 88:15 89:2 91:20 94:5,21 106:2 107:1,22 107:25 109:11 122:13 123:15 127:5 129:3	133:7 135:4 142:25 151:20 151:20 157:6,6 ways 22:14 93:12 94:6 we'll 14:16,19 20:2 21:20 22:9,24 23:9 40:18 73:24 86:2 90:13 100:9 102:5 103:12 127:9 136:21 158:15 we're 6:12 16:5 17:4 23:24 24:12 34:21 35:1 42:8 50:10 58:18 68:25 69:2 72:4,24 73:9 73:14,17,20 88:25 92:20 93:12 94:5,8 94:10,19 96:4 98:1 110:12,13 110:14,21 111:18 112:6 115:13 116:13 117:17 120:2,3,5 128:19 134:13 137:5,16 141:23,25 142:1 148:4,17 148:21 150:4 151:2,8,10,25 152:4,5 154:10 155:23,23 156:20,21 157:1,2,7 we've 16:1,19 20:25 22:8 46:12 53:12 60:12 64:7 70:8 72:13 73:18 80:18 91:12,19,22 92:11 93:24	121:23 127:10 133:1 140:16 140:25 weather 64:12 80:17 87:18 87:22 Weber 55:14 website 36:17 wedding 120:3 121:17 122:8,9 122:18,18 123:5 126:19 127:1,2,5,6 148:14 weddings 121:17 148:19 week 16:24 40:21 46:15 50:10,12 weekends 62:9 weeks 48:17 49:3 56:20 weight 71:10 welcome 6:9 79:17 130:23 welcomed 94:18 welfare 21:15 22:2 35:18 93:16,23 went 28:8 30:7 36:4 49:3 56:19 129:1 150:4 west 12:21 37:24 38:1 western 85:14 wet 81:1,4 87:18 87:22 whatsoever 83:10 WHEREOF 162:12 whichever 66:22 123:15 whoever's 45:11 wide 26:9 27:19
--	---	---	---	--

PUBLIC HEARING 2/25/2020

27:21,23 51:11 51:12 81:14 82:24 95:8 118:18 123:15 123:16 widen 83:19,23 95:14 widened 40:12 40:12 84:3 87:8 widening 85:22 width 11:17 86:9 88:21 101:21 101:22 widths 22:7 wife 130:11 wife's 30:11 Williams 30:4 winding 25:3 window 49:19 windy 45:5 winery 116:20 wish 92:14 wishes 6:15 95:16 witness 14:20 17:20 42:23 45:21 46:2 52:5,15 56:2 56:5,8 57:16 58:2 61:7,12 65:21 67:16 69:6,21 80:6 88:6 110:6 120:15,19 125:25 128:1,8 129:25 130:20 131:14 132:19 134:11 135:19 136:3 162:12 witnesses 13:23 120:17 wonder 59:25 wonderful 67:22 word 22:23 26:15	worded 151:20 151:20 wording 155:14 words 28:18 76:21 work 23:2 24:1 24:17 25:14 26:3 27:8 53:19 55:21 72:23 122:5 130:12 worked 50:13 working 23:3,13 41:2 53:21 works 27:9 102:15 world 83:6 worried 16:5 93:20 133:6 133:25 worse 93:13 worst 40:24 worth 28:18 worthwhile 39:24 wouldn't 122:20 127:22 140:1 wreck 44:8 45:3 write 27:4 97:6 written 143:1 152:23 wrong 88:8 118:6 143:13 wrote 35:23 150:19 <hr/> X X 2:1 3:1 4:1 X' 53:4 <hr/> Y Y 23:4 25:1,10 25:24 51:5 77:21 79:8 83:2 yard 82:12	yeah 8:15 15:10 19:22 39:5 50:16 61:1 77:5,20 78:20 78:24 128:11 135:9 140:24 142:12 146:21 147:11,20 154:7 year 13:10 29:7 40:21 62:21 85:16 94:24 117:9 148:15,19 148:24,24 years 33:1,24 50:20,21 62:8 62:24 66:2,8 67:4 68:15 81:4,25 94:25 117:10,10,10 139:16 Yellow 77:14 yesterday 56:24 young 130:13 <hr/> Z Z 3:25 152:7 157:23 zero 119:24 Zielke 2:17 5:10 98:17,20,21 100:11,15 104:3 109:8,19 109:25 124:2 124:4,8 125:4 125:14,19 147:15 148:2 152:8 153:3,6 153:16,23 154:17,21 156:4,10 159:17,20,24 160:1,3,5,8 zone 20:18 25:11,12,15 39:9 44:10	zoned 11:8 101:12,17 zones 131:22 zoning 1:1,8 3:5 3:6,18,19 5:8 5:9 6:5 8:25 9:4,12 10:2,6 10:15,19 11:3 11:22 12:10,14 13:15,16,21,25 15:12 19:4,7,17 21:23 22:17 33:2 64:16 94:17 98:22 99:2,10 100:1 100:5 101:4 102:19,20 104:18 108:23 109:12,22 120:8 131:21 131:22 133:19 135:25 149:14 <hr/> 0 024 10:10 <hr/> 1 13:11,24 19:1 23:18 105:17 1,000 151:15 1,000-acre 151:24 1,500 34:9 1,600 10:23 1.3 78:20,21,24 1/2 26:11,11,12 32:5 10 101:3 104:4 144:10 10,000 111:3 10:22 161:9 100 2:17 36:6 53:6 123:16 11 136:7 110 2:18 113 4:5 114 3:25 4:4	146:15 11TH 5:15 120 146:8,13,13 125 123:15 146:12 131 2:19 136 2:20 14 2:10 30:1 146:8 140 112:11,12 149 2:21 15 31:9 42:3 50:24 55:5,10 59:5 105:17 122:23 125:5 125:7 15-year 41:21 150 85:2 127:2 150-person 127:5 159 2:22 16 28:2,3,11 51:12 81:13 83:20,24 84:1 88:21 146:15 16-foot 28:17 29:11 31:3 51:11 88:8 161 2:23 162 2:24 167 145:18 17 10:16 11:23 18 26:12 51:12 83:24 86:9 88:10,21 113:23 121:24 18-foot 26:9 185 32:2 50:25 67:1 77:22 81:24 82:19 1875 71:21 19 3:11 26:12 28:3 190045 100:19 190233 10:17 1903 52:24 1945 16:2
---	---	--	---	---

PUBLIC HEARING 2/25/2020

1991 62:8	112:23,23	118:3,4 119:9	<u>5</u>	82 133:10
1993 62:11	114:7 115:7,8	120:3 122:2,14	5 3:14 26:7 43:2	85 19:6,10
<u>2</u>	118:20 119:12	122:15,17,24	111:22 125:10	46:24 51:18
2 3:25 11:23	119:16 120:8	123:3 124:13	141:11	<u>9</u>
21:8,22 24:1	134:16,21	126:13,17,25	5,000 34:10	9 3:5,6,7,8 26:11
42:19 114:20	138:23 139:10	127:3,8 129:5	5,500 34:10	26:11,12
115:5	139:13 141:4	133:4,8	50 30:14	9:00 106:7
2-4 3:13	143:16,20	134:25 135:1,2	500 43:15 76:7	9:01 98:10
2,000 34:9	150:19 157:25	135:6,13,13	101:5 105:7,13	9:10 98:11
120:1 139:1	237(A)(2) 133:10	136:21 137:8	111:3 114:6	91 21:23 92:25
2,250 123:1	134:18	137:13 138:19	122:3 135:1	92 13:1,7
20 27:11,18 28:11	237(c)(2) 110:24	138:20,21,24	136:17,18	9476 17:25
38:16,19 39:3	24 101:11	139:3,23	138:14 142:1,5	95 2:14 22:11
40:13 70:5	240,000 34:1	140:5 141:8	145:6 149:8	95(b) 13:14
71:15 74:3	25 1:10 6:2	143:5,7,8,13	524 114:24	97 50:20,21
81:13 106:7	38:19 100:22	145:5 147:6	5325 10:21	98 2:16
200024 2:6 3:3	250 113:23	149:8 151:18	5411 15:22 43:8	99 3:18,19,20,21
10:12	26 162:18	152:16	55 118:9	58:6
200034 2:15	268 121:25	300-person	550 111:17 133:5	
3:16 100:16	136:16	122:18 127:5	5512 61:17	
2001 98:24	268-person	305 135:7	<u>6</u>	
2003 36:4	126:19	310 140:9	6 2:3 27:8	
2010 36:16	28 101:7	312 40:21	108:4 146:9	
2012 32:23	28th 108:14	314 5:17	60 70:6 101:21	
2015 12:2,5,9	2nd 107:17	3665 100:21	141:22	
26:14 40:12	<u>3</u>	120:22	63084 1:5	
2016 32:25	3 4:4 24:19 32:5	3690 132:24	63101 5:16	
2017 102:7	107:20 113:19	<u>4</u>	644-2191 5:17	
2018 32:9,19,25	115:5 138:23	4 4:5 13:1,7,14	65 2:11	
2019 10:16 11:23	3,000 118:2	32:6 42:19	68 53:10	
28:24 32:7	3/10 44:11	112:17 113:12,17	<u>7</u>	
100:24 101:3	30 11:17 49:8,10	4,500 122:25	7 2:4 27:16	
103:14,20	51:2 100:24	4/5 14:4 15:5,7	108:10	
104:1,4 106:7	104:1	15:12	7:00 1:11	
2020 1:10 6:2	300 10:25 101:2	40 23:21 66:2	70 2:12	
28:23,24	101:13,14	132:2	70s 52:22	
101:7 107:20	102:11,13	400 1:4	711 5:15	
108:4,10	104:24,25	42 3:13,14 70:3	73 2:13	
2021 148:24	105:1,12 106:1	45 11:1 23:21	78 2:9	
2022 162:18	106:21 110:25	52:23 55:5	79 92:25	
21 103:14	111:10,11,16,20	101:21	<u>8</u>	
21st 103:22	112:19,20	45-acre 11:14	8 2:8 11:23	
22 27:20,23	113:5 114:9,10	452 127:16	27:25 59:5	
40:13	114:25 115:21	47 38:25 77:22	8:00 25:18	
23 11:12	115:22 116:1	480 147:19		
237 110:17 111:14	117:11,22,25			